90-1411

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

Martha N. Stores c/o
Freddie D. Bibbs and
Jimmie Drew Lockhart, Sr.,
Pro Ses., Petitioners

vs.

Matanuska-Susitna Borough, Inc. et. al.
Mr. Patrick E. Lancaster, et. al.,
Mr. Jim Psenak and his
Construction Company et. al.,
Respondents.

—

PETITION FOR WRIT OF CERTIORARI TO The Supreme Court of the State of Alaska

PETITION FOR WRIT OF CERTIORARI

Jimmie Drew Lockhart, Sr.
and Freddie Bibbs
3727 Randolph Street
Anchorage, Alaska 99507
(907) 563-1807

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QUESTIONS PRESENTED

1. In the complete absence of any factual contact such as formal legal letters, petition, or an informal hearing or a formal proceeding between petitioners, respondents any judge or judges on the bench of the Supreme court even when under the color of Alaska Supreme Court judges sworn fiduciary responsibility under Alaska statutes Title 22. Judicial §§ 22.05.010, 22.10.010: Alaska Constitution [a]rticle IV, §§ 1, 2(a) & 3., ib., [a]rticle I, §[7]; U.S. Constitution amendments V, VII, X, XIII and XIV; 42 U.S.C.S. §[1983]., 28 U.S.C.S. §[1331]. as well as respondents' policies and practices in the administration of the aforementioned several Alaska and federal statutes. Accordance to the court records respondents committed proved conspiracy through

intended irregular administering legal procedure that led to fraud and sabotaged us out of our constitutional guaranteed rights as set out supra during the course of this action committed by the supreme Court of Alaska Clerk action on 6/27/1990, 9/14/1990 ad 9/21/1990, resulting from the lower court and respondents' irregular administered illegal acts, practices, revolutionized policy obstructing the administration of justice. See: concomitant [Appendices] A-1 through A-25, the commenced happening on the 12th day of August 1985 through the 21st day of September 1990, which is a total time of over six (6) years full time doings clear throughout the bitter entire proceeding by conspiracy to committing full time fraud and deceit practices by (a) Lower court Judge Beverly W. Cutler, (b) attorney for

respondents Richard (Dick) Weinig, (c) Alaska Supreme Court clerk Mr. David A. Lampen, which clearly reflect all acts alleged herein reflect from the records was fully condoned by the State of Alaska Supreme Court, despite its sworn(ed) fiduciary responsibility to protect our guaranteed constitutional equal protection clause of the 14th amendment to the United States constitution and article I. §[7] to Alaska constitution. See: "A-1", 1st ¶, particularly lines four and five (4 & 5). Which constitute upper-crust downtrodden slandering disadvantaged black pro se litigants under redhearring because of our race and color. See: 42 U.S.C.S. §§[1981, 1982 & 1983], the 13th amendment to the constitution of the United States.

2. According to petitioners' super set-out authorities on conspiracy,

irregularities and fraud acts were done by respondents against petitioners, while at all time knowingly or should have known, that such acts, practices, and policies were in direct violations of obstructing the administration of justice that should have warranted "a final State Court decisions" within the meaning of decisions of the United States Supreme Court fiduciary responsibility of upholding the equal protection due process of law clause set-out within the 14th amendment of the United States constitution, and if not did the State Courts have subject-matter jurisdiction over the petitioners case?

3. Contrary to the responsibility restored upon the United States Supreme court to establish case law reserving the rights of the petitioners, and all similarly situated citizens of the United

States in the exercise of its constitutional Appellate jurisdiction over the rights of the petitioners' due process of law, emanating from the intent of the 14th amendment of the United States constitutional equal protection clause. Accordingly, such Alaska Superior Court finding (Order) failed to honor its fiduciary ethic duty by not invoking to the petitioners the rights of law in this sore-matter. Which was followed by the Alaska Supreme Court shamefaced corroborated which such sad unethical heinous style of practices by such high court officials' administrators' "findings," is what should be construed highly "unintelligibly illegal bad conduct," for an officer of any court to redherringly assert, while at all times accepting one of the respondent's appeal brief in case # S-3391 Civil, under the

title of Jimmie Drew Lockhart, Sr., pro se., vs. Alaska Sales & Services, Inc., et. al., filed in this Alaska Supreme Court on April 24th 1990 before this very same Supreme Court Clerk. And through to date February 7th 1991 there has been no Supreme Court finding. I wonder why? I further add that said appeal case does not involve color of state law as severe as this matter such as this stagnated matter denying petitioners a day in neither of the state court, Superior or Supreme. Wherein it should be only considered that Alaska Supreme Court decision was a repeat of the same treatment which was done in lower court. Therefore, neither did the Alaska Supreme Court honor its own Alaska Appellate Rules 201 (a) through 218, AS 22.05.010, thereby copying the lower court style of not placing honorary on

AS 22.07.020, or any respect to [a]rticle I. §[7] to Alaska [c]onstitution, or the 14th amendment to the United States constitution with respect keeping with judicial ethic practices of stare decisis does physically change the original form and meaning of the Superior Court's original "verb" set out by the Superior Court of Alaska 8/13/1985 and June 15th, 1988 Orders at all times favoring respondents and its attorney's malpracticing acts over petitioners, by purposely omitting any show of sufficient authority evidence in support of it's finding of facts, and followed by the Alaska Supreme Court Clerk's 27th day of June 1990 scandal own set-out "verbs" asserted word (sic) ". . . unintelligible, . . ."., should have sufficed a recommendation by the lower court bias act

for the Alaska Supreme Court to have invoked a "de nova" decision by its Justices, to reverse, the substance of the original form and meaning of the United States Supreme Court, responsibility of upholding and invoking the equal protection clause to the 14th amendment of the United States Constitution.

4. The records reflects during what we thought to be forthcoming a pre/trial stage (which never happened) respondents on several different occasions at several different times moved both court for some type of dismissal, "emphasis added." In fact, respondents moved for dismissal so many times that it appeared to us to have wore both court's moral fiduciary responsibility down, thereby causing the in-question courts to grant dismissal favoring the respondents out of disrespect

for due process of law as set out supra, as per Alaska statute "PART II. PROCEDURE ON APPEALS as of RIGHT." (Rules 201 through 218). AS 22.05.010 and AS 22.07.020, 42 U.S.C.S. §§ 1981 through 1983 respectively.

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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vs.

Matanuska-Susitna Borough, Inc. et. al.
Mr. Patrick E. Lancaster, et. al.,
Mr. Jim Psenak and his
Construction Company et. al.,
Respondents.

To the Honorable Chief Justice and
Associate Justices of the Supreme Court
of the United States:

Mr. Jimmie Drew Lockhart, Sr., and Mr. Freddie Bibbs pro se petitioners herein, respectfully pray that a writ of certiorari issue to review the order of the Supreme Court of the State of Alaska entered this case on the 20th day of December 1988.

OPINIONS BELOW

The July 27, September 14 and 21, 1990

Orders of the Supreme court for the state of Alaska whose decision is herein sought to be reviewed is appendix as pages A-1 thru 1.1, A-2 thru 2.1, A-3 thru 3.1, and A-4 thru 4.1.

The Superior court for the State of Alaska herein decisions is also sought to be reviewed, is also appendix as pages A-5, A-6 thru 6.4, A-7 thru 7.3, A-8 thru 8.3, A-9 thru 9.2, A-10 thru 102., A-11 thru 11.1, A-12 thru 12.1, A-13 thru 13.1, A-14 thru 140.10, A-15 thru 15.1, A-16 thru 16.1, A-17 thru 17.1, A-18 thru 18.1, A-19 thru 19.4, A-20 thru 20.1, A-21 thru 21.1.

JURISDICTION

The Orders of Alaska Supreme Court was entered on July 27, September 14th and 21, 1990. The jurisdiction of United States Supreme Court is invoked pursuant to 28 U.S.C. § 1254 (1) and the United States

Supreme Court Rule 17.1 (a) and (c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

While the pertinent verbal tests of the United States and State of Alaska statutory provisions involved are set forth within the following; The United States constitution [a]rticle III. §§ 1, and 2 [1], [a]rticle IV § [1], § 4. [a]rticle VI § [2], amendments IV, V, VII, VIII, XIII §§ 1 & 2, and the XIV § 1., of the United States constitution, Article I. §§ 5, 7, 12, 15, 16, 18 & 22., Article IV §§ 1 & 2 (a) of Alaska constitution. Alaska statutes 22.05.010 and 22.07.020. Alaska Appellate Rules 201 (a) & (b), 202 (a) & (b). Alaska Civil Rules 12 (a)(c)(e and (h)(1), Rule 55 (1)(b)(1)(c)(d), Rule 56 (a)(b)(c)(d)(3) & (g). Rule 77 (a)(b)(1)(2) 7 (c). Rule 72 (a)(c)(e)(2)

and Alaska Evidence Rule 43.1 (a).

STATEMENT OF THE CASE

Based upon the Alaska State Supreme Court, July 27, September 14, and 21st, 1990 Orders practices vs. Article I. § 7, article IV §§ 1 & 2 (a), § 3, Alaska § 22.05.010 and § 22.07.020., the Alaska Appellate Rules, the constitution of the United States as set out on supra P, 3., 42 U.S.C.S. inter alia, §§ 1981, 1982 & 1983., from the results of petitioners' prior pleadings cause the Alaska Superior and Supreme Courts to invoke appendices Pp. A-1 through A-21. Accordingly, both Alaska States court's acts are construed of committing violations upon the petitioners' constitutional rights from the legal use of their benefits of the due process of law and equal justice, which is guaranteed to petitioners thereby.

Accordance to the phrases stated within [a]rticle III §§ 1 and 2 [1] of the constitution of the United States. Its petitioners interpretation thereof, that Congress expressly dedicated all constitutional authority to the United States Supreme Court to invoke and enforce individual's constitutional rights when brought to its attention. And the United States Supreme Court has the express authority to dedicate the same fiduciary responsibility to all inferior courts, meaning, the U.S. district courts and all State's Supreme Courts. And the State's Supreme Courts are responsible to the United States Supreme Court that all its state inferior courts uphold all individual's constitutional rights the same as spelled out by the Alaska elected lawmakers invoked within the Alaska

constitution, article IV §§ 1 & 2 respectively. Accordingly, petitioners' beseeched our constitutional rights of this matter first within the Alaska constitutional Superior Court. Upon its neglect to honor us our constitutional due process rights is construed a neglect, to perform its sworn(ed) fiduciary responsibility. Accordingly, we were left high and dry in an alleged constitutional court of competence with no other choice but to beseech redress within the Alaska State Supreme Court, under inter alia Appellate Rule 201 resulting from Appellate Rule 202 directions, in compliance with ib., Rule 204. Unfortunately for "us" the petitioners, the Alaska Supreme Court also gave disrespect to its fiduciary responsibility by unlawfully and willfully neglect to uphold its constitutional

sworn(ed) oath of office to uphold the flag of the United States, as set out in the pledge of allegiance to the United States flag. Accordingly, we construe that, the respondents acts, practices, and policies, (a) violated their ethic responsibility to their oath of office, (b) to their law colleagues, (c) to the public trust, (d) to the court in which it practices its profession, (d) to before the judge which administers the cases within its court rooms. Accordingly, not only did petitioners not receive our constitutional due process rights, the records reflect, that the indigent pro se petitioners lost the benefit of their hard earned $750.00 appeal bond, and $70.00 filing fees to the state totaling $820.00. Accordingly, that should be construed the state court invoking slavery under state law in

violation of the 13th amendment of the United States constitution. Accordingly, such acts should be construed redherring and heinous, hiding under the veil of their job title and/or positions. See: The equal protection clause to the 14th amendment to the United States Constitution, 42 U.S.C.S. § 1983.

The records reflect, despite all aforementioned remedies taken thereof by the petitioners, all efforts were unconstitutionally defeated from the lack of state courts' refusal to cooperate by honoring their sworn(ed) fiduciary responsibilities. In fact, it's obviously noted from the Alaska Supreme Court writing within the attached Appendix A-1, Lines 4-6, that their being very little to no respect for the indigent's pleadings, forthcoming from the State of Alaska high

court phrased insults stated hereof pursuant inter alia to the Code of Professional responsibility DR 10102 (A)(1) thru (6), was unbecoming for any judicial or other officer of these courts to redherringly assert, even if one is not acting within its own defense. See: Conley vs. Gibson, 355 US 41, 2 L.Ed 2d 78 S. Ct 99, at P, 80., and Gillespie v. Civiletti, 629 F.2d 637 (1980) at P. 673 1st column, P. 640 article II.A §§[1 thru 5] P. 641 1st and 2nd columns §§[6 thru 12] respectively.

Accordingly, it was more shocking having to bear witness to the facts of the Alaska highest court. The Supreme Court justices go beyond ethical conduct to corroborate with its clerk's assertion. But to also go along with its Clerk's assertion, while signatorial to the prejudicial slanderish

open remarks assessable to the public viewers to look down their noses at petitioners as being uneducated illiteracy not just to legal pleadings, but also in general. That brings back memories of the 1964 Civil Rights Voting Rights Act, as a direct result, we construe that the state courts, along with our prosecutors, selected petitioners for malicious prosecution from the results of the Alaska State Superior Courts very first date of petitioners August 12, 1985 filing of the complain against all named respondents. See: Appendix A-1, Lines 4 thru 6, respectively, and United States vs. Tibbetts, 646 F.2d 198 (1981) at P. 195 2nd column §[4]. According to the attached appendices exhibits as pages B-1 thru 18.1 are some few pertinent pleadings done between the petitioner and the respondents

between the 12th day of August, 1985 and December 1988.

Based upon facts that petitioners out right over and over refused a day in either of Alaska State courts to defend our guaranteed constitutional rights, despite the facts of our several requests thru pleadings in State Superior Court, in fact, our first motion was on August 12, 1985 [B-2 thru 2.5]. And the results came from the lower court expeditious first 8/12/1985 day's relief by Order No. A-4, again the lower court denied our entering her court room in defense of our constitutional rights, see: attached Appendices A-5 and a-6 thru 6.3 respectively. Accordingly, we construed that such lower court irregular legal acts, practices and policies proved to be so strongly consistent with lower court authority based against our being

able to enjoy our constitutional rights which is guaranteed to us by the constitutions of both the United States and the State of Alaska, Article I, § 7 thereof. Accordingly, we were left with no other remedy but to construe that such lower court acts were so forcefully favoring the respondents from Jump Street of 8/12/1985, for so long, until the case reached its iron clad resistible climax completely and totally exhausted to prevent the petitioners from seeking further relief in the [marked to lose] state courts, while at all times knowingly, or should have known that such acts would have forced us having to inexperiencely consult this highest court of these United States for our constitutional lawful due relief properly sought in lower state courts to no avail, thereby, with us knowingly, that

this legal approach is our last "legal" recourse for constitutional relief as we know it to be today in this society. Accordingly, it's quite clear to us from the lower court's first irregular act of 8/12/1985 Order that we were then marked for selective prosecution, attached here as A-4 respectively, see: inter alia Alaska Civil Rules 77 (c) and 12 (a) were borrowed in this matter based on the grounds, that the lower court tailored this case as its [taunt.] act of 8/12/1985 expedite own initiative under its Supremacy veil Order there of A-4. We construe, that such lower court irregular acts caused us having to undergo damaging hardship doing our attempting to post legal effective defenses on our behalf, see: United States vs. Tibbitts, set out supra at P. 10. Furthermore, we contend that the documents

within the state courts' records, do clearly and convincingly demonstrate to this Honorable Court, that we, the petitioners, did beseech our constitutional rights through the state courts, time after times to no avail. please review our attached appendices, Exhibits B-1 thru B-18.1, which represent a limited amount of lower court parties' pleadings.

LASTLY

The respondents' acts of asserting authority of their standing dedicated statutory right to property line easement right-of-ways rights at will, without having to invoke eminent domain doctrine, and escaping the use of invoking the 5th amendment to the United States's constitution, or article I. § 18 of Alaska constitution, by their strong arm tactic, threatening prosecuting plaintiff Bibbs

with police protection and jail tie if he in any ways attempted to cause any type of defense causing stoppage of the construction. It's noticed that defendants' taking was done under the color of Borough and State laws.

Accordingly, the documents which are attached hereof as Exhibits "A, B & C" demonstrated, that Mat-Su Borough charged the in-question real property legal "The South one quarter (SE 1/4) of the Southeast one quarter (SE 1/4) of the southeast one quarter (SE 1/4) of Section 25, Township 17 North, Range 2 East, Seward Meridian, being within the Palmer Recording District, Third Judicial District, State of Alaska", real property taxes on the entire ten (10) acres for some odd 35 years. Accordingly, their taking without invoking eminent domain violated the petitioners' constitutional

rights while the respondents invoked the Slavery Act of taking said property without just compensation, based on grounds that Alaska Statutes § 09.25.050, makes itself quite clear on conclusive evidence on adverse possession. However, in the same breath it also makes itself clear that Municipalities may not be divested of title to real property by adverse possession, AS 29.71.010. In this matter the Mat-Su Borough did not hold title to any portion of the in-question real property, even though there may have been provision in the real property deed on real property line easement, etc. However, the statute which elaborate on real property line easements in private resident areas speaks of four (4) rods width, meaning that two rods per each section line side, try AS 19.10.010 respectively. Accordingly the statute is

clear on lenient feet per each one (1) rod = 16-1/2 feet each times [X] four (4) = sixty-six (66) feet width divided by two (2) equals thirty-three (33) feet per side of section line. In this instant, petitioners lost 33 feet from two sides of said property because of enjoying a chosen corner property. That did not create a non-working problem. But, however, what did create a problem was when the Borough knew or alleged to have known, that they would one day reserve the 33 feet of petitioners real property, at the owners expense hidden from the average layman real property owner by assessing real property taxes on the entire ten (10) acres and demanded payment thereof under the color of Borough and State laws. And it can be viewed from this very piece of real property, that it was seized for non

payment of property taxes and sold to cover the alleged non-payment of taxes. Accordingly, that's fraudulent conveyance, and is subject to repossession or redress for damages, check-it-out. According to AS 09.10.030, elaborates, that no person(s) may bring an action for recovery of real property, unless commenced within ten (10) years. And AS 09.25.050 elaborate, on one(s) paying real property taxes continuance for seven (7) years or more is entitled to said real property. Accordingly, we foresee there's no lawful ways that entitled the Borough to an automatic easement right-of-way without first invoking the eminent domain doctrine. The facts remain to reflect, that the ten (10) acres, 33 feet, the owners were not allowed to do anything constructive, in the meantime, keep in mind that the Borough

sold said real property with the intent of charging the owners for something they could not use ever because of the ties within the real property titles. Accordingly, it should be viewed, that the manner in which the Borough took petitioners' real property without invoking eminent domain doctrine was an act of slavery protected under the veil of color of state law, in the meantime attempting to coverup the over-charged real property taxes which they had done and is no doubt continuing to do so with certain other real property owners. Accordingly, that's embezzling and unjust enrichment from real property owners' hard earned monies. Accordingly, it should be kept in mind that, petitioners were assessed property taxes, invoiced, billed and demanded payment for the entire ten (10) acres for

over some thirty (30) years, and neglected to redeem or attempt to redeem said right-of-way rights by refunding said property owner(s) the over charges which had been paid upon the Borough's demand, and rightfully due them. Arguendo, it may have worked if prior to the immediate beginning right-of-way construction if the Borough had gone to individuals and made each a just dollar value for the easement portion taken, it would have saved a bunch, if for no more than the pubic respect. The records reflect, that the Borough chose to invoke slavery to go along with fraud.

There's one other item which should be brought to this court's attention. And that is the Alaska State Superior court Order of June 15th, 1988, as A-14 thru 14.9, which I make reference to A-10.7 claiming the Borough having an absolute

easement right-of-way right. We disagree based on the immediate foregoing, A-10, asserted that respondent Lancaster personally delivered the Borough's notice of construction of said road right-of-way to Mr. Bibbs at his resident on the "31st day of July 1985." The records reflect, that construction had already begun on or about mid July 1985. See: B-3 and B-10.1 is noted to have been served upon Mr. Bibbs by certified return-receipt requested on 7/25/1985. It's noted that said sworn(ed) affidavit failed to insert proof of certified service upon Mr. Bibbs, B-11.1, which reflects proof that their styled notification failed complying with AS 38.05.945 (b) and (c). According to the records asserted in part that at least thirty (30) days notice prior to any action commence. The records reflect that when

petitioner was served said notice construction was already underway by the respondents, B-12 and 12.1. Accordingly, the lower court's written Order failed to present facts to comport its Order, as set out supra by the petitioners, see: A-14.5 thru 14.9 respectively.

The granting of the writ of certiorari by the Supreme Court of the United states to settle the four (4) conflicts set forth in the petitioners' petition for the writ of certiorari would prove an unprecedented legal relief factual and constitutionally judicial administration whom have presented evidence to probable judicial conspiracy to commit fraud by the respondents against the petitioners throughout the entire State of Alaska legal proceeding whose federal protected rights are guaranteed by inter alia the Equal Protection clause of the

United States constitution set out within the 14th amendment, constitutionally, statutory, and case law.

Based on the foregoing, I contend that in many ways this matter addresses this court finding of May 29th, 1979 Green vs. Georgia, 442 at P, 95 2nd ¶, Pp. 96 and 97 finding, especially when considering the State of Alaska Supreme and Superior Court's denial of receiving us within its court room to defend ourselves in our constitutional right., see attached exhibit A-1.1, A-6.1, A-6.6, versus page V citing.

CONCLUSION

Therefore, the petitioners prays the Supreme Court of the United States to grant the writ of certiorari to settle the four (4) conflicts set out in this petition.

Respectfully submitted;

Dated at Anchorage, Alaska this _____

day of February 1991.

_____

Mr. Jimmie Drew Lockhart, Sr. pro se, and

_____

Mr. Freddie Bibbs, pro se: for petitioner
3727 Randolph Street
Anchorage, Alaska 99508
(907) 563-1807, message.

CERTIFICATION OF SERVICE

I certified on this _____ day of Februar
1991 that I caused two correct copies to b
served upon petitioners' attorney of recor
who's address is at 2550 Denali Street
Suite 700; Anchorage, Alaska 99503.

_____

Jimmie Drew Lockhart, Sr.

Subscribed and sworn heretobefore me thi
____ day of February 1991. Notary Publi
in and for the State of Alaska.

_____

My Commission expires:_____

APPENDIX A

SUPREME COURT FOR THE STATE OF ALASKA

NOS. 83-127, 3PA 85-1405 CIVIL

MR. JIMMIE DREW LOCKHART, SR. AND MR. FREDDIE BIBBS, et al., ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS-APPELLANTS

VS.

MATANUSKA-SUSITNA BOROUGH, INC., et al., DEFENDANTS-APPELLEES

Appeals of: The Law-Offices of Pletcher, Weining, Lotteridge and Moser

---

Appeal from the Supreme Court for the State of Alaska before the Clerk Mr. David A. Lampen, acting on Order of Mathews, Chief Justice, and Rabinowitz; Nos. S3-127 3PA 85-1405 Civil

---

THIS CASE NEVER SAW THE INSIDE OF ANY COURT ROOM IN OUR DEFENSES

BEFORE MATHEWS, CHIEF JUSTICE, and Rabinowitz, Justice descending. They would render a decision on the merits after briefing by the appellees.

APPENDIX A

Page(s)

A. Court Orders Sought to be Reviewed

1. June 27, 1990 order of the Supreme Court for the State of Alaska. A-1.1

2. September 14, 1990 order of the Supreme Court for the State of Alaska.....A-2.1

3. September 21, 1990 order of the Supreme Court for the State of Alaska.....A-3.1 and A-3.2

4. August 12, 1985 order of the Superior Court Third Judicial District at Palmer, Alaska....A-4.1

5. August 28, 1985 order of the Superior Court Third Judicial District at Palmer, Alaska....A-4.2

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No. S3 127

SUPREME COURT FOR THE STATE OF ALASKA

Ms. Martha N. Stores Pro Se, et. al. Appellants.,	)	Filed June 27, 1990
vs.	)	ORDER
Matanuska-Susitna Borough, Inc., et. al., Appellees.	)	

Despite being given several opportunities to do so, appellants have not filed a brief which meets the requirements of the Appellate Rules. Appellants' argument is largely unintelligible and unsupported by citation to specific portions of the record. Accordingly, the appeal is dismissed with prejudice.[1]

SO ORDERED

Entered by direction of the court, this 21st day of June, 1990, at Anchorage, Alaska.

CLERK OF THE SUPREME COURT

DAVID A. LAMPEN

---

1. Matthews, Chief Justice, and Rabinowitz, Justice, dissent. They would render a decision on the merits, after briefing by the appellees.

june:4

No. S3127

SUPREME COURT FOR THE STATE OF ALASKA

MARTHA N. STORES, et. al.,	)	Filed
	)	9/14/1990
APPELLANTS.,	)	
	)	
VS.	)	ORDER
	)	
MATANUSKA-SUSITNA BOROUGH, Inc., et. al.,	)	
	)	
DEFENDANTS.	)	
	)	

Trial Court No. 3PA 85-1405 Civil

Before: Matthews, Chief Justice, Rabinowitz, Burke, Compton and More, Justices.

The court issued a full court order on June 22, 1990, dismissing the above appeal with prejudice. The appellants submitted a document on August 23, 1990, that the court has treated as a motion for full court reconsideration of the order of June 22, 1990.

IT IS SO ORDERED:

The motion for reconsideration of the order of June 22, 1990, dismissing the appeal is denied.

Entered by direction of the court at Anchorage, Alaska on September 11, 1990.

DAVID A. LAMPEN, SR.
Clerk of the Supreme Court

[Matthews, Chief Justice, and Rabinowitz, Justice, dissent. They would grant motion for reconsideration.]

No. S3127

SUPREME COURT FOR THE STATE OF ALASKA

MARTHA N. STORES, et. al.,	)	Filed
	)	9/21/1990
APPELLANTS.,	)	
	)	
VS.	)	ORDER
	)	
MATANUSKA-SUSITNA BOROUGH, Inc., et. al.,	)	
	)	
DEFENDANTS.	)	
	)	

Trial Court No. 3PA 85-1405 Civil

The appellants filed an application on August 23, 1990, which the court treated as a motion for full court reconsideration of its order of June 22, 1990, dismissing the above appeal. The appellees moved on September 10, 1990, to file an opposition to the motion for reconsideration. On September 14, 1990, the full court filed an order denying the motion for reconsideration. On September 18, 1990, the appellants submitted an opposition to

the motion for reconsideration.

IT IS SO ORDERED:

The motion for leave to file an opposition to the appellants' motion for reconsideration is dismissed as moot in light of the order of the full court of September 14, 1990, denying the motion for reconsideration.

Entered by direction of an individual justice at Anchorage, Alaska on September 19, 1990.

DAVID A. LAMPEN, SR.
Clerk of the Supreme Court

IN THE SUPERIOR COURT FOR THE STATE OF

ALASKA THIRD JUDICIAL DISTRICT AT PALMER

MS. MARTHA N. STORES c/o	)	**Filed**
MR. FREDDIE D. BIBBS and	)	**8/12/85**
MR. JIMMIE DREW LOCKHART,	)	
SR., PRO SES.,	)	No. 3PA 85-
	)	1405 Civil:
PLAINTIFFS-APPELLANTS.,	)	
	)	
VS.	)	ORDER
	)	
MATANUSKA-SUSITNA BOROUGH,	)	
MR. PATRICK E. LANCASTER,	)	
et. al.,	)	
	)	
DEFENDANTS-APPELLEES.	)	
	)	

ORDER DENYING PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER WITHOUT PREJUDICE

Plaintiffs' motion for an ex parte temporary restraining order is hereby DENIED without prejudice. Plaintiffs' assertions do not meet the criteria in Civil Rule 65 (b)(1) and (2).

Dated at Palmer, Alaska this 12 day of August, 1985.

Beverly W. Cutler
Superior Court Judge:

IN THE SUPERIOR COURT FOR THE STATE OF

ALASKA THIRD JUDICIAL DISTRICT AT PALMER

MS. MARTHA N. STORES c/o	)	**Filed**
MR. FREDDIE D. BIBBS and	)	**8/28/85**
MR. JIMMIE DREW LOCKHART,	)	
SR., PRO SES.,	)	No. 3PA 85-
	)	1405 Civil:
PLAINTIFFS-APPELLANTS.,	)	
	)	
VS.	)	ORDER
	)	
MATANUSKA-SUSITNA BOROUGH,	)	
MR. PATRICK E. LANCASTER,	)	
et. al.,	)	
	)	
DEFENDANTS-APPELLEES.	)	
	)	

This court denies plaintiffs' Ex parte Motion to Compel Immediate Service. Plaintiffs are requesting the court exercise jurisdiction over a part not a party to the instant action.

Dated at Palmer, Alaska this 28 day of August, 1985.

Beverly W. Cutler
Superior Court Judge:

The court's certification of service by regular U.S. mail to each parties Att: on the 28th day of August 1985.

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS, et. al., PRO SE.,	Filed 12/11/1985
PLAINTIFFS.,	No. 3PA 85-1405 Civil
VS.	ORDER
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	
DEFENDANTS.	

O R D E R

With this court having knowledge of the above Captioned case, and upon observing the attached motion the court can find no prejudice to defendants, in granting plaintiffs' motion .

WHEREFORE, IT IS SO ORDERED. (The court: Extension until Dec. 23 granted.)

DATED this 11 day of December 1985.

BEVERLY W. CUTLER, SUPERIOR COURT JUDGE:

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	)	Filed 1/16/1986
PLAINTIFFS,	)	No. 3PA 85-1405 Civil:
VS.	)	ORDER
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	)	
DEFENDANTS.	)	

ORDER DENYING MOTION TO RECONSIDER

Plaintiffs have moved the court to reconsider its refusal to enter default and default judgement against Defendants. Plaintiffs have also requested that the court withdraw the October 30, 1985 substitution of counsel filed by Defendants Matanuska-Susitna Borough and Patrick Lancaster. Lastly, the Plaintiffs have requested that the court schedule either a default judgement hearing to determine

damages or a settlement conference.

On October 30, 1985 Plaintiffs requested entry of default and default judgement against each Defendant in this action. Plaintiffs state that they were entitled to this relief as a matter of right.

This argument is without merit. Civil Rule 55 (d) states that "[a] party may respond to any pleading at any time before default is entered." The facts clearly show that the answer of Defendants Matanuska-Susitna Borough and Patrick E. Lancaster was filed on October 23, 1985; therefore, an entry of default and default judgement was not warranted against those Defendants.

Additionally, the answer of Defendants Jim Psenak and Psenak Construction Company was filed on November 1, 1985, two days after Plaintiffs filed their request for

entry of default. This court takes judicial notice of the facts that the Clerk of Court could not reasonably have been expected to act upon Plaintiffs' request prior to November 1, 1985. Subsequent to November 1, 1985 the Clerk had no discretion to enter default and default judgement against Defendant Jim Psenak and Psenak Construction Company, as their answer had been filed. See Civil Rule 55 (d).

Plaintiffs have also requested that the court withdraw the october 30, 1985 substitution of counsel filed by Defendants Matanuska-Susitna Borough and Patrick E. Lancaster. This court will consider this request as a motion for reconsideration.

Civil Rule 77 (m) requires that motions to reconsider be made with in ten days after notice of ruling. Plaintiffs' motion

is not timely, and the court need not address it on the merits.

Nevertheless, the court notes that Plaintiffs' arguments in support of withdrawal are devoid of merit. A party is entitled to have any number of counsel of record, a party is entitled to liberally substitute counsel, and Civil Rule 81 (d) (1) (i) does not require that the substitution be in the form of a motion.

Lastly, Plaintiffs have requested that the court schedule either a default judgement hearing to determine Plaintiffs' damage or a settlement conference. Because the court has declined to enter default against Defendants, a default judgment hearing is unwarranted at this early stage of litigation. However, any party may request a settlement conference at some future date when the action has been

narrowed somewhat.

DATED at Palmer, Alaska this 16 day of January, 1986.

BEVERLY W. CUTLER,
SUPERIOR COURT JUDGE

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	)	Filed 2/25/1986
PLAINTIFFS,	)	No. 3PA 85-1405 Civil:
VS.	)	ORDER
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	)	
DEFENDANTS.	)	

ORDER DENYING MOTION TO RECONSIDER

The court has reviewed Plaintiffs' motion to reconsider, filed January 27, 1986. Plaintiffs have requested that the court reconsider its January 16, 1986 Order denying Plaintiffs' previous motion to reconsider. The court HEREBY DENIED Plaintiffs' motion.

The court notes that Plaintiff's request for extension of time, filed November 14, 1985 and granted December 11, 1985, covered

only an extension of time to object to the court's refusal to enter default and default judgment. The motion did not request an extension to file a late motion to reconsider the November 13, 1985 substitution of counsel. Therefore, Plaintiffs' December 23, 1985 motion to reconsider the substitution of counsel was untimely.

Dated at Palmer, Alaska this 25 day of February, 1986.

BEVERLY W. CUTLER
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	Filed 3/5/1986
PLAINTIFFS,	No. 3PA 85-1405 Civil:
VS.	Pleading dated 2/5/86.
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	Plaintiffs' motion for clarification
DEFENDANTS.	of the court's 2/25/86 Order and 4/29/86 Order.

Come now plaintiffs, Bibbs and Lockhart, Sr., and move this court for clarification of it's February 25th, 1986 Order on the following ground:

That, inasmuch as this court has cited its notification of plaintiffs' motion to file late as alleged. Plaintiffs' failed to cited any cited specifies thereof. However, plaintiffs, find within their office records, their motion opposing

substitution of counsel on grounds of his failure to provide pursuant to Civil Rule 81 (d) (1)(i)(ii)(iii) inter alia, until legal practicing attorney had properly withdrawn as Civil Rule 81 so states. Plaintiffs further noted this court invoking plaintiffs' motion as untimely filed, which is what plaintiffs have been attempting to insist the court to invoke that the defendants' pleadings were not timely filed to plaintiffs' complain, motion, etc., and especially after defendants failed to timely reply thereto said aforementioned pleadings. Plaintiffs, bring attention to this court that, upon their plaintiffs' pleadings within their complain followed thereafter by motion of default and default judgment. And that this court without an opposition by either defendant, the court on it's own Order took

action in the defendants' defense by merely pencilling in "NOT USED" to plaintiffs' pleadings, etc. Inasmuch as this court in its own way defending the defendants, could be abused of its discretionary authorities. At the meantime, the court within its February 25th 1986 Order invoked Plaintiffs' allegedly untimely reply after granting plaintiffs' motion to file late. And on the other hand hailing to invoke defendants' errors the same as the plaintiffs' allegedly untimely pleadings, why? In the meantime I/we the plaintiffs, are understanding, that this court may have committed an intentional error it its findings.[1/] See: U.S.C.S. 42. §§ 1981, 1982, 1983, 1985, 1988 and 2000., article I. §[7] to Alaska constitution, the 14th amendment to the United States constitution, see: Church of Scientology

vs. United States Department of Justice

612 F.2d 417, 422 (9th Cir. 1979).

Without pointing out further errors plaintiffs, for the third time beg of thi court to carefully review its finding ar grant the plaintiffs default and defaul judgment in the interest of justice.

Thank this court in advance
respectfully submitted.

Dated at Anchorage, Alaska this 5th da of March, 1986.

Mr. Freddie Bibbs, pro se:
and

Mr. Jimmie Drew Lockhart, Sr.,
pro ses:

1/ ORDER

This request is hereby denied. The court has reviewed the February 25 Order and has determined that it needs no clarification. 4/29/1986.

Beverly W. Cutler

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	Filed 7/6/1987
PLAINTIFFS,	No. 3PA 85-1405 Civil: Plaintiffs' Motion for Order Compelling and Order.
VS.	
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	
DEFENDANTS.	

That this court issue an order compelling defendants to reply (respond) to plaintiffs' 9th day of September, 1985 request for documents (pursuant to Alaska Civil Rule (34)), defendants are required and ordered to respond within 30 days after the signing of this order.

The plaintiffs, are to respond to defendants' 29th day of May, 1986 request for production of documents within 20 days thereafter receipt of defendants' response

to "their 9/9/1985 requested production. And the court further order that both parties cooperate with each other from this date forward.

Respectfully submitted:

Dated at Anchorage, Alaska this 6th day of July 1987.

Mr. Jimmie Drew Lockhart, Sr., Pro Se; and

Mr. Freddie Bibbs, Pro Se:

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	)	Filed 9/25/1987
PLAINTIFFS,	)	No. 3PA 85-1405 Civil:
VS.	)	ORDER
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	)	
DEFENDANTS.	)	

IT IS HEREBY ORDERED, that defendants are to respond to plaintiffs' 9th, 1985 request for production within _____ days after singing of this order. And plaintiffs are to respond to defendants' May 9th 1986 request for producing within ____ days upon his (therein) receipt of defendants' reply. And both parties are to better cooperate with each other from this date forward, or this court will deal with the situation accordingly, hereafter.

Done at Palmer, Alaska on this _____ day of _____ 1987.

_____
Beverly W. Cutler,
Superior Court Judge:

Received at plaintiffs' office on 10/10/87

ORDER

"Moot, see plaintiffs' motion of 8/24/1987, granted by court this _____ 9/25th/87.

_____
Beverly W. Cutler, Superior Judge:

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	Filed 8/24/1987
PLAINTIFFS,	No. 3PA 85-1405 Civil:
VS.	Order 9/25/87
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	Served 10/10/87
DEFENDANTS.	

Come plaintiffs, and move this court to resign their 1985 request for production and move for shortening time. The reason is, in order that said request is now being replaced with an updated request for documents, etc.

Respectfully submitted:

Dated at Anchorage, Alaska this 19th day of August, 1987.

Mr. Freddie D. Bibbs, Pro. Se, and

Mr. Jimmie Drew Lockhart, Sr.
Pro Ses

O R D E R

This court is knowledgeable of plaintiffs' motion to resign its' 1985 request for production. It's this court's position, that no sign of damages appears to cause prejudice to defendants' defenses. Therefore, this court grants plaintiffs' motion.

WHEREFORE, IT IS SO ORDERED. [the court] (no opposition have been filed).

Dated this 25th day of September 1987.

Beverly W. Cutler,
Superior Court Judge

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	)	Filed 10/1/1987
PLAINTIFFS,	)	No. 3PA 85-1405 Civil:
VS.	)	
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	)	
DEFENDANTS.	)	

O R D E R

The order for shortening time is moot. The 30 days regular time to respond already has passed. Plaintiff did not move for expedited consideration.

Dated at Palmer, Alaska this 1st day of October, 1987.

Beverly W. Cutler
Superior Court Judge

Received at Plaintiffs' office 10/10/1987.

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	)	Filed 8/27/1987
PLAINTIFFS,	)	No. 3PA 85-1405 Civil:
VS.	)	ORDER
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	)	Served on Plaintiffs 10/10/1987.
DEFENDANTS.	)	

O R D E R

Thru this court's notice of plaintiffs' asserted perusal through the parties' 1987 pleadings, shows to this court several defendants' repeated, reiterated argumental citing without showing authorities.

Plaintiffs' further argues that defendants' said response shows "emphatic" demands aimed at this court's ruling before further action will be performed says defendants' 19th day of August, 1987

pleading., id., at page one (1).

Plaintiff has moved to rule defendants' 19th day of August 1987 pleading be ruled frivolously filed.

Plaintiffs' move this court to invoke 42 U.S.C.S. § 1988 and Civil Rule 82 and Alaska.

Plaintiffs, have also moved that defendants' 19th day of August 1987 pleading be sanctioned $500.00 penalty for posting said pleading tobefore this court. And plaintiffs be compensated for having to respond thereto said $500.00 moot pleading.

This court has reviewed plaintiffs' foregoing motions, and find no prejudice in which would prejudice defendants' defenses. Therefore, this court grants plaintiffs' above cited motions on the merits.

WHEREFORE, IT IS SO ORDERED.

Dated this _____ day of _____ 1987.

Beverly W. Cutler,
Superior Court Judge

The court's writing in Order:

(sic) "Moot" plaintiff withdrawn original motion that led to my ruling.

Beverly W. Cutler
Superior Court Judge
7/25/1987

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES.,	)	Order 9/28/1987
PLAINTIFFS.,	)	3PA 85-1405 Civil:
VS.	)	Received 10/10/1987
MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al.,	)	
DEFENDANTS.	)	

ORDER DENYING MOTION TO DISMISS
WITHOUT PREJUDICE

The parties are urged to review the other orders accompanying this Order.

The court finds, in its discretion, that a Rule 41 (e) dismissal is not warranted at this time. Plaintiffs' are warned however that all further conduct in this case, including discovery requests and the

court's regulation of discovery, will be strictly governed by the Alaska Rules of Civil Procedure and other relevant rules and statutes.

Dated at Palmer, Alaska this 28th day of September, 1987.

Beverly W. Cutler
Superior Court Judge

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES.,	)	Order 4/1/1988
PLAINTIFFS.,	)	3PA 85-1405 Civil:
VS.	)	The court's notice to the Plaintiffs.
MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al.,	)	
DEFENDANTS.	)	

N O T I C E

The court has pending a Motion for Summary Judgment filed by defendants in this case. The Alaska Supreme Court has just recently stated that trial court has the duty to advise pro se litigants of proper procedure for the action they are attempting to accomplish. Breck vs. Ulmer,

et. al., Supreme Court Opinion No. 3241, November 6, 1987. Therefore, the court hereby notifies plaintiffs that they must comply with the requirements of Civil Rule 56 (e) and submit affidavits in opposition to defendants' Motion for Summary Judgment. Plaintiffs shall have fifteen days from the date of receipt of this order in which to submit said affidavit.

Dated at Palmer, Alaska this 1st day of April, 1988.

Beverly W. Cutler
Superior Court Judge

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES., PLAINTIFFS., VS. MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al., DEFENDANTS.	Order 5/16/1988 3PA 85-1405 Civil: Served On Plaintiffs 6/22/88

ORDER

Plaintiff has filed two Motions to compel response to request for production. These Motions were filed on September 28th and October 15, 1987. The court has reviewed the filing in this case and finds that said motions are moot. Defendants appear to have responded to plaintiffs'

requests for production. Therefore, the motions are hereby DENIED without prejudice.

DATED at Palmer, Alaska this 16th day of May, 1988.

Beverly W. Cutler
Superior Court Judge

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	)	Filed 6/15/1988
PLAINTIFFS,	)	No. 3PA 85-1405 Civil:
VS.	)	ORDER
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	)	Served On Plaintiffs On The 22nd Day of June 1988.
DEFENDANTS.	)	

ORDER GRANTING SUMMARY JUDGMENT

This matter has come before the court on defendants' Motion for Summary Judgment. The court has carefully reviewed the pleadings, exhibits and affidavits in the case and has allowed plaintiffs a second opportunity to submit affidavits to the court in opposition to the summary judgment motion.

The court hereby finds that there are no genuine issues as to any material facts and

that defendants are entitled to judgment as a matter of law. Therefore, defendants' Motion for Summary Judgment is GRANTED.

This action concerns the construction by defendants of the road known as the Plumley Loop/Claudill Road Extension along the edge of plaintiffs' property in the Butte area outside of Palmer. Defendants surveyed the location of the § line forming the eastern boundary of plaintiffs' property. Defendant Matanuska-Susitna Borough claimed an easement for public road purposes along the § line, and built the road on the line.

Plaintiffs brought this action pro se, asking for both damages and declaratory and injunctive relief against defendants for the surveying and construction of the road. Their complaint included many different causes of action, sometime stated in a confusing manner. The court has discerned

the following claims from the allegations in the complaint:

(1) Defendants unlawfully failed to notify plaintiffs that the § line would be used for a public road;

(2) Defendants trespassed upon plaintiffs' property;

(3) Defendants trespassed upon plaintiffs' property in a manner that constituted racial discrimination against plaintiffs;

(4) Defendants failed to pay plaintiffs just compensation for the land on which the road was constructed;

(5) Defendants discriminated against plaintiffs because of their race;

(6) Defendant Patrick Lancaster acted improperly in his interactions with plaintiffs.

The case has had a rather unorthodox

history since plaintiffs filed their complaint. Both sides attempted to narrow the issues through the discovery process, with little success. At one point, plaintiffs attempted to remove the action to federal court but were unsuccessful.

Finally, in November 1987 defendants filed their Motion for Summary Judgement. Plaintiffs responded to the motion in a manner that indicated that they were unfamiliar with the requirements of the Rules of court governing motions for summary judgment. Because of Alaska Supreme Court has stated that trial courts have the duty to advise pro se litigants of the proper procedures to follow under the rules governing civil litigation, Breck vs. Ulmer, 745 P.2d 66, 75 (Alaska 1987), this court issued a Notice informing plaintiffs that they should submit affidavits in

opposition to defendants' summary judgment motion. Plaintiffs submitted affidavits in response to his Notice on April 12, 1988.

ISSUES PRESENTED

Civil Rule 56 (c) states that a motion for summary judgement shall be granted if the moving party shows that there is no genuine issues as to any material facts and that it is entitled to judgment as a matter of law. Defendants first argue that plaintiffs' complaint itself acknowledges that plaintiffs were given written notice prior to the surveying of the property that the § line would be used for public road purpose. The court finds that defendants are correct. The complaint stated that "on or about July 31st, 1985, Borough's official Mr. Lancaster, came to plaintiff Mr. Bibbs' home and served with supra exhibit "A"... [sic]." Exhibit A is a copy

of the written notice provided to plaintiffs by defendants, which stated"[y]ou are hereby advised that the new road will use the existing § line easement . . . ." The court finds that there is no genuine issues of fact as to whether this notice was presented to plaintiffs. Therefore, defendants are entitled to summary judgement as to the first of plaintiffs' claims listed above.

Defendants next argue that there are no genuine issues of fact as to the next three claims, because the Borough has a reserved easement for public road purposes along § lines.

The court finds that defendants are correct in this assertion. AS 19.10.010, provides that a right-of-way four rods wide is dedicated for public highway use along §§ line. See Girves v. Kenai Peninsula

Borough, 536 P.2d 1221, 1225-1225 (Alaska 1973). Giving that the Borough has such a right-of-way easement, it follows that the Borough was within its rights in using a strip two rods wide on plaintiffs' side of the § line to build its road. Defendants also have presented the court affidavit that establish that the road was constructed entirely within the strip covered by the right-of-way.

Plaintiffs have failed either to rebut defendants' legal arguments or to show a genuine issue of fact as to the construction of road within the right-of-way. Plaintiffs have alluded to a "dog-leg" in the road in several of their filings, possibly implying that the road does encroach upon their property. These allusions, however, do not amount to a showing sufficient to establish a genuine

issue of facts under Rule 56 (c).

Giving that defendants properly built their road within a right-of-way reserved to them by statute, it follows that defendants are entitled to judgment as a matter of law as to plaintiffs' claims numbered two, three and four above. The existence of right-of-way negates the possibility of a trespass and the need for just compensation to the plaintiffs.

Plaintiffs appear to raise one issue that must be addressed at this juncture. Plaintiffs appear to argue that defendants built the road entirely on plaintiffs' side of the § line and left intact the strip two rods wide on the other side of the line. Although it is by no means clear from plaintiffs' statements, the court surmises that plaintiffs may be attempting to argue that defendants committed racial

discrimination against plaintiffs by building the road in such manner. There are several barriers to the court accepting this argument, however. First, it was not raised in plaintiffs' complaint, but only appeared later in the litigation. Plaintiffs never have moved for leave to amend their complaint to assert this argument. Second, the argument is not presented in a a form that conforms to the Rule 56 (c) requirements for opposing summary judgment (the court found mention of the theory in copies of plaintiffs' interrogatories in the case file). Third, plaintiffs merely mention the theory and do not substantiate it with any specific showing of discriminatory acts or intent which would establish an actionable claim in this regard.

This theory concerning the construction

of the road entirely on plaintiffs' side of the § line is the only ground on which plaintiffs appear to base their fifth claim of general racial discrimination. Therefore, summary judgment is granted to defendants as to this claim as well.

Plaintiffs' final cause of action concerning allegations of misconduct against defendant patrick Lancaster, a Borough right-of-way agent who worked on the Plumley Loop/Claudill Road Extension project. Plaintiffs' claim against Lancaster is unclear, but it appears to e linked with plaintiffs' claim of improper notice of the impending surveying and road-building work on the edge of their property. The court already has determined that defendants are entitled to judgement as a matter of law as to the issue of notice, and plaintiffs have failed to show

(4)

90-1411

Supreme Court, U.S.
FILED
NOV 30 1990
OFFICE OF THE CLERK

APPENDIX B

IN THE SUPERIOR COURT FOR THE STATE OF

ALASKA THIRD JUDICIAL DISTRICT AT PALMER

Nos. 3PA 85-1405 CIVIl

MS. MARTHA N. STORES c/o
MR. FREDDIE BIBBS and
MR. JIMMIE DREW LOCKHART, SR.,
PRO SES.,
PLAINTIFFS-APPELLANTS.,

VS.

MATANUSKA-SUSITNA BOROUGH, INC.
et al.,
PLAINTIFFS-APPELLEES.

PLEADINGS IN ALASKA STATE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT PALMER BETWEEN
PLAINTIFFS AND DEFENDANTS

Appeal for the Superior Court Third
Judicial District at Palmer to the
Supreme Court for the State of Alaska
Nos. S3-127, 3PA 85-1405 Civil .

BEFORE MATHEWS, CHIEF JUSTICE, and
Rabinowitz, Justice descending. They would
render a decision on the merits, after
briefing by the Appellees.

APPENDIX B

IN THE SUPERIOR COURT FOR THE STATE OF

ALASKA THIRD JUDICIAL DISTRICT AT PALMER

Nos. 3PA 85-1405 CIVIl

MS. MARTHA N. STORES c/o
MR. FREDDIE BIBBS and
MR. JIMMIE DREW LOCKHART, SR.,
PRO SES.,
PLAINTIFFS-APPELLANTS.,

VS.

MATANUSKA-SUSITNA BOROUGH, INC.
et al.,
PLAINTIFFS-APPELLEES.

PLEADINGS IN ALASKA STATE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT PALMER BETWEEN
PLAINTIFFS AND DEFENDANTS

Appeal for the Superior Court Third
Judicial District at Palmer to the
Supreme Court for the State of Alaska
Nos. S3-127, 3PA 85-1405 Civil

BEFORE MATHEWS, CHIEF JUSTICE, and
Rabinowitz, Justice descending. They would
render a decision on the merits, after
briefing by the Appellees.

APPENDIX B

Page(s)

B. Parties' Superior Court Pleading to be Reviewed:

Filed

1. August 12, 1985 complaint of plaintiffs.....B-1.2 thru B-1.18

2. August 12, 1985 Motion for Restraining Order.B-2.1 thru B-2.10

3. August 12, 1985 Plaintiffs' attached Exhibits "A & B"...B-3.1 & 2

4. August 12, 1985 Summons and Complaint.....B-4.1 thru B-4.3

5. August 12, 1985 Co-plaintiff Bibbs' Affidavit.....B-5.1 thru B-5.7

6. September 9, 1985 Plaintiffs' Request for Production .....B-6.1 thru B-6.6

7. August 27, 1985 Plaintiffs' Motion to Compel Process Server to Serve Summons and Complaints .....B-7.1 thru B-7.5

8. August 27, 1985 Bibbs' Affidavit in Support of Motion to Compel process Server to Perform B-8.1 thru B-8.5

Appendix B (Continued)

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SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER, ALASKA

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES.,	)	Filed 8/12/1985
	)	3PA 85-1405 Civil:
PLAINTIFFS., APPELLANTS.,	)	
VS.	)	
MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al.,	)	
DEFENDANTS-APPELLEES.	)	

Come now above complaining plaintiffs' alleges the following;

I.

The plaintiffs, are black American citizens of the United states, and residents of the following cities all being in the State of Alaska, Palmer, Soldotna and Anchorage.

II.

Defendants are Borough Corporation, a private owned contractor be it none incorporated or whatever, private citizens organized under laws of both the United States and State of Alaska and their agents and employees.

III.

This is a civil action brought for preliminary and permanent injunction to prevent deprivation under color of state law of certain rights, privileges and immunities secured to the plaintiffs by the constitution of both the State of Alaska and the United States for an order declaring unconstitutional the discriminatory acts of defendants, and for money damages to redress the injuries caused to plaintiffs by the unconstitutional and eminent domain acts of

defendants.

IV.

Jurisdiction of this court is invoked pursuant to title 28 U.S.C. section 1343. (3)(4), 2201, 2202 and title 42 U.S.C.S. §§ 1981, 82, 83, 85, 88 and 2000., article I. §§ 1, 2, 3, 4, 5, 6, 7, 12, 18, & 22 of the constitution of the State of Alaska., to secure the rights of plaintiffs, to security of person and property as such rights are enjoyed by white citizens, and to enforce the right of plaintiffs to inherit, purchase, lease, sell, hold and convey real and personal property on the same basic a white citizen.

A. This action is also brought pursuant to 28 U.S.C. § 1331, the thirteenth amendment of the constitution of the United States, to redress the deprivation of rights, privileges, and

immunities secured thereby.

V.

This is a suit for damages and for injunctive and other affirmative relief against discrimination is a badge and incident of slavery unlawful under the thirteenth amendment to the constitution of the United States code, 24.6 § 1981, 82, and 28 U.S.C.., § 1331.

VI.

On information and belief, plaintiffs' allege that defendants, thru their discriminatory tactics are the owners, planners, engineers, contractors and developers of adjoining properties to plaintiffs' property, of which legal description is believed to be known as SE 1/4, SE, 1/4, SE 1/4, SE 1/4 § 25, Township 2, East § 2, near Palmer, Alaska pursuant to the recording district of Palmer,

Alaska.

VII.

The defendant, Mr. Patrick E. Lancaster alleged right-of-way, failed to timely and or properly notify the known plaintiff or plaintiffs, prior or after their action had begun or "commenced," (see: attached exhibit "A and B"): the trespassing on to plaintiffs' property by ways of its surveying crew.

1. That on or about July 15, 1985, Mr. bibbs, received a phone call, from an alleged Borough official, whom asserted to Mr. Bibbs, that they were surveying for a road right-of-way. Upon the caller learning of co-plaintiff's Bibbs' unhappiness over the way said Borough officer secretly mealy mouth their action upon plaintiffs thereafter.

VIII.

That on or about July 29, 1985 plaintiff and his mother went to Borough's Mr. Lancaster's offic for a conference therewith. (A) During the conference, Mr. Lancaster was asked several questions of what was about to go down, and the name of the Borough officer on or about July 15, 1985 whom called Bibbs. Defendants, avoided the questions by answering by giving evasive and vindictive answers.

IX.

That on or about July 31, 1985, Borough officer Mr. Lancaster, came to co-plaintiff, Bibbs' home and (exhibit "A") served with supra mentioned exhibit "A," and apologize to Mr. Bibbs for his July 29, 1985 rudeness toward he and his mother.

X.

1. It's noted that the supra cited exhibit made no mention of the Borough,

having an easement rights thereupon plaintiffs' property, nor did the Borough inform the plaintiff Bibbs, that their hired help would be trespassing on to his property (see: exhibit "A").

2. At no time plaintiff Bibbs, knew or was informed or gave his permission for defendants to enter upon the in-question property.

XI.

That plaintiffs, Bibbs and Lockhart, Sr. suspected an eminent domain scheme by defendant Lancaster at that point. After Mr. bibbs and his mother's July 29, 1985, meeting with Mr. Lancaster, especially after receiving (his 7/31/1985 notice planning of a public road two days later) hand delivery letter (exhibit "A") and more particularly after Mr. Lancaster's apologized to Bibbs, for his July 29, 1985

rudeness toward he and his mother. However, from their continuance intended trespassing on to plaintiffs' property committed eminent domain acts unlawful. Furthermore, nor have Mr. Lancaster had to obtain and serve upon Mr. Bibbs and his mother his threatened court order restraining Bibbs from interfering with the Borough and its accomplishers' unlawful activities while on plaintiffs' property.

XIII.

That prior or through today, the defendants have failed to present to plaintiffs a legal document showing their authorities authorizing their trespassing onto plaintiffs; property to commit eminent domain action.

XIII.

That plaintiffs have never been legally notified of defendants' rights to enter

upon plaintiffs' property and take for said alleged right-of-way without being at least first consulted with the proposed owner or owners, and thereafter compensated the owners therefore., (article I. § 18. to the constitution of the State of Alaska, and the fifth amendment to the constitution of the United States).

XIV.

That at no time defendants, ever offered Mr. Bibbs an offer to alginate (above count VI) property to the Borough or their co-accomplishers.

XV.

The while co-plaintiff Bibbs, his mother and friend purchased said (above VI) property, said deed failed to show an easement, or that an easement was to be later effected by adding thereto (said

above count VI) property of ten (10) acres plot. Nor did the Borough property tax assessment ever show or indicate said Borough alleged legal easement right-of-way were exempted from property taxing.

1. That the Borough engineers improvidential calculations has all the appearance of outright taking one and one half acres (1-1/2) of Bibbs' property from said ten acre plot (above count VI).

XVI.

That Bibbs is a retired citizen with said property in his and his mother's permanent debt free home.

XVIII.

That Mr. Bibbs borrowed money from friends to help get himself situated with a fairly decent living quarters on verbal promise that the lenders having liens pending at later repayments.

1. That defendants' actions has put bibbs on an unexpected legal spot with his faithful lenders.

XIX.

That defendant Mr. Lancaster's July 29, 1985 hand delivered letter failed to give legal notice of the Borough a right to enter upon plaintiffs' real personal property to commit eminent domain acts without a court order served upon plaintiffs. Especially after being knowledgeable of the plaintiffs' resentfulness.

XX.

Defendants, on the basis of race, have deprived plaintiffs of their full and equal enjoyments of goods, services, facilities, privileges, advantages and accommodations, including to have the right and interest of none molestic property as enjoyed by white

citizens, defendants' refusal to extend that right to the plaintiffs, is an intentional and willful full purpose of intent to deprive plaintiffs of their constitutional rights to freely purchase property, and said property should be redeemed rightfully without regards to race on the basis thereof. Defendants will continue to deny plaintiffs, whom are black, the rights to own said real property as set out above at count VI. And or equity in supra mention real property unless restrained by the courts.

XXI.

That if plaintiffs are forced by the courts to accept defendants' type of alleged claim right-of-way rights there may be further damages imposed upon other property owners, who may as well suffer unjust treatment as we have undergone

unjustly.

XXII.

Plaintiffs therefore, has no plan adequate, or other speedy remedy at law that's sufficient remedy this matter, unless this court intervenes, plaintiffs will continue to suffer irreparable injuries because of defendants' racially discriminatory policy, practice, custom and usages thereby. Plaintiffs will continue to suffer if this impending action caused by defendants is not stopped now by the courts.

XXIII.

As a direct and proximate result of the wrongful acts done by the defendants, we have suffered actual damages in the amount of three million dollars ($3,000,000.00) and will continue to suffer damages from humiliation and embarrassment caused by the

defendants' refusal to plaintiffs, fairly because of our race or color, and the deprivation by defendants of plaintiffs' constitutional and statutory right freely to obtain, hold and convey real property without regards to race or color. Because of defendants' malicious refusal to deal fair and squarely with plaintiffs, on equal basis as with white citizens, all because of unjustified eminent domain tactics and discriminatory against plaintiffs because of our race and color thereby, plaintiffs claim punitive and/or exemplary damages in the amount of one million dollars ($1,000,000.00).

WHEREFORE, plaintiffs, demand judgment:

1. Granting plaintiffs preliminary and permanent injunction, enjoining defendants their agents, employees, and those acting

in concern with them, from further trespassing, eminent domain style construction in conjunction of said real property pending final determination by this court.

2. Granting plaintiffs declaratory judgement that the acts, policies and practice complain herein, violated plaintiffs' rights to the fourth, fifth, thirteenth, and fourteenth amendments to the United states constitution, and article I. §§ 1, 2, 3, 4, 5, 6, 7, 12, 18 and 22 of the constitution of the State of Alaska, and the provision of title 42 U.S.C.S. §§ 1981, 1982, and 1983, hereof.

3. Granting plaintiffs preliminary and permanent injunction, enjoining defendants their agents, employees, and those acting in concern with them, denying plaintiffs, their rights of full and equal enjoyment of

good, services, facilities, privileges, advantages, and the right to contract and redeem real and personal properties as required by law.

4. Granting plaintiffs judgement against defendants and each of them jointly and severally for a fair and equitable compensatory dollar amount of four million dollars ($4,000,000.00) all in one cash payment with U.S. currency free of any type indebtedness attached to the in-question property as the result of plaintiffs' claim. And that co-plaintiffs, Bibbs and his mother, be allowed to retain all remaining property debt free as through were before this action began in August of 1985. And that plaintiffs be granted no further road or street assessments from the result of defendants' improvement hereof. And that no further harassment on to

plaintiffs' real property without either's written permission.

5. Granting plaintiffs judgement against defendants, and each of them jointly and severally for punitive or exemplary damages in the amount of one million two hundred fifty thousand dollars ($1,250,000.00).

6. Award plaintiffs their reasonable cost of expenses spent hereof.

7. Award plaintiffs reasonable attorney fees.

8. Grant plaintiffs such other and further relief as the court may deem just and proper.

We pray.

Dated at ANchorage, Alaska on this 12th day of August 1985.

I/we certify that a complete copy was attached to licensed Process Server Summons

to be served upon each of the above named defendants on this 12th day of August 1985.

Mr. Freddie Bibbs, pro so
Box 2893; Palmer, Alaska 99645
(907) 745-4714 and

Mr. Jimmie Drew Lockhart, Sr., Pro Se
3727 Randolph Street,
Anchorage, Alaska 99508
(907) 563-1807

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER, ALASKA

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES.,	Filed 8/12/1985
PLAINTIFFS., APPELLANTS.,	3PA 85-1405 Civil:
VS.	Plaintiffs' Motion For Restraining Order:
MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al.,	
DEFENDANTS-APPELLEES.	

I.

Come plaintiffs, Mr. Bibbs and Lockhart, Sr., and move this court (pursuant to Civil Rule 7 (b)(1), for pendente lite restraining order and preliminary and permanent injunction against each of the above-named defendants in caption, and particularly Matanuska-Susitna Borough,

Inc., et. al.

II.

This matter involves a special federal question, concerning deprivation under color of state law of certain rights, privilege and immunities secured to plaintiffs by both constitutions (a) Alaska and (b) United States. This court has jurisdiction under article VI. § I. and § 3 thereof, to Alaska constitution, and jurisdictional power under 28 U.S.C.S. § 1343 (1 through 4), 2201, 2202, and title 42 U.S.C.S. §§ 1981, 82, 83, 85, 88 and 2000, to secure the rights of plaintiffs to security of persons and property as such rights are enjoyed by white citizens, and to enforce the rights of plaintiffs, to inherit, purchase, lease, sell, hold and convey real and personal property under 28

U.S.C.S. § 1391 (b)(c) & (e). This action is also brought pursuant to the thirteenth (13th) amendment to the constitution of the United States, and article I. §§ 1, 2, 3, 4, 5, 6, 7, 18 and 22 inter alia, of the constitution of the State of Alaska, to redress the deprivation of rights, privileges, and immunities secured thereby.

III.

On information and belief, plaintiffs allege that defendants, through their fraudulent eminent domain tactics, are owners and developers of property entitle, (see: attached page 2, count VI and exhibit "A" attached page 3, count IX, §(2) inter alia).

IV.

Plaintiffs' allege that defendants' conspired by fraudulent alienation, and eminent domain, with willful intent of

depriving plaintiffs of their constitutional rights to freely purchase and/or redeem our Borough's taking our property for right-of-way, without regards to race or state statute requirements.

V.

Defendants, are believed to have unlawfully trespassed onto plaintiffs' property under excuse of constructing a public road right-of-way along and upon plaintiffs' property section line, short of exposing to plaintiffs that such easement rights were prior reserved, without any other strings attached. Accordingly, such is easily believed that defendants' tactics can be construed of being conspiracy and racial discrimination., 42 U.S.C.S. § 1983.

VI.

Co-plaintiff Bibbs' mother holds title to said real property and he has general

power of attorney thereof. And he makes his home there, with full power of administration thereof.

VII.

Plaintiffs move the court to invoke Civil Rule 65 (a)(d), and refuse invoking civil Rule 65 (c), on grounds (a) that the plaintiffs hold clear title to said real property and by the mere facts that defendants' fail producing to plaintiffs' or this court, authorities of their rights to their assumed absolute right-of-way. (b) That upon plaintiffs' finding out the facts through discovery whether defendants had an absolute right to a public right-of-way now or ever. (c) And that defendants stopped from causing further damage to plaintiffs Bibbs and his other's properties, in the case it be found that defendants had no absolute right-of-way

rights thereof around eminent domain authority (which had not been so exercised). (d) That in the case the Borough were at illegal fault, it would save us taxpayers money from further expenses for legal action. (e) That it is not plaintiffs' intentions to change any local governmental laws, etc.. (f) It's plaintiffs' belief pursuant to the supra cited authorities, this court should grant our motion and further on grounds the order issued on a prima facie and or ex parte express, because of its' nature hereof.

VII.

Plaintiffs allege that we have been neglected from the Borough's business transaction on it's planning engineering alleged right-of-way. That is based on the facts of our being permitted to fully inform the facts to them, which may have

prevented such expensive court action. Plaintiffs further allege that the attached exhibits "A and B" does substantiate our allegations within the attached complaint. The exhibits further substantiate the defendants' had already preplanned the road construction by their already having commenced the set out its construction action prior to their making plaintiffs knowledgeable.

IX.

Accordingly, plaintiffs therefore have no adequate or speedy remedy at law to prevent defendants' action for injunctive relief is plaintiffs' only means for securing relief.

WHEREFORE, plaintiffs pray that this Honorable Court:

1. Issue a Prima Facie Ex Parte Express Pendent Lite Order, and a

preliminary injunction, ordering defendants, and their officers, agents, employees, successors, attorneys and all those in active concern or participated with them to refrain therefrom immediately, pending this court's final hearing and determination of this action. And to order further defendants' activities in connection with the supra named real property ceased.

2. Issue a permanent injunction perpetually enjoining and restraining defendants, their officers, agents, employees successors, attorneys and all those in active concert or participation with them, from the conduct complained of herein;

3. Award to plaintiffs, four million dollars ($4,000,000.00) compensatory damages, and two million two hundred fifty

thousand dollars ($2,250,000.00) in punitive or exemplary damages.

4. Award to plaintiffs, our costs and disbursements herein, as well as reasonable attorney fees; and

5. Award to plaintiffs, such other and further relief as this court may so deem proper and just.

Dated at Palmer, Alaska this 12th day of August 1985.

Mr. Freddie Bibbs, Pro Se.
Box 2893; Palmer, Alaska 99645
(907) 745-4714
and

Mr. Jimmie Drew Lockhart, Sr., Pro Se
3727 Randolph Street
Anchorage, Alaska 99508
(907) 563-1805

I/we certify that this motion is attached to the complaint hereof.

Mr. Freddie Bibbs, and

_____

Mr. Jimmie D. Lockhart, Sr.:

O R D E R

The court having knowledge of the foregoing plaintiffs' pleading, and find the same to be urgently needed pursuant to the pleading heretobefore me, therefore, this court grants plaintiffs' motion on its face value prima facie ex parte express, until defendants can or may prove different.

WHEREFORE, this court grants plaintiffs' motion.

IT IS SO ORDERED.

Dated this _____ day of _____ 1985.

_____

Judge of the Superior Court,
Palmer, Alaska

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER, ALASKA

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES.,	Filed 8/12/1985
PLAINTIFFS., APPELLANTS.,	3PA 85-1405 Civil:
VS.	Plaintiffs' Attached Exhibits "A" & "B";
MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al.,	
DEFENDANTS-APPELLEES.	

EXHIBIT "A" COPY

"MATANUSKA-SUSITNA BOROUGH"
Box B. Palmer, Alaska 99645 . Ph. 745-4801

DEPARTMENT OF PUBLIC WORKS
July 31, 1985

E . Russell & B. J. Peterson
General Delivery
Palmer, Alaska 99645

RE: NOTICE OF PLANNED CONSTRUCTION
Butt Area Roads-Plumley/Claudill
R093 Parcel 1

Dear Property Owners:

The Borough presently plans to construct a road from the south end of Claudill Road to the section corner common to Sections 25, 36, Township 17 North, Range 2 East, and sections westerly along the existing section line easement to Bodenberg Creek (see attached sketch).

You are hereby advised that the new road will use the existing section line easement for the proposed road.

If you have any questions concerning this written notice, please contact this office between the hours of 8:00 a.m. and 5:00 pm. at 745-4801, Ext. 694.

Sincerely,

Patrick E. Lancaster
Right-of-Way Agent

bt

Our exhibit "A".
Our exhibit "B" is as set out by defendants supra first ¶. In part (sic) ". . . , (see attached sketch)."

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER, ALASKA

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES.,	Filed 8/12/1985
PLAINTIFFS., APPELLANTS.,	3PA 85-1405 Civil:
VS.	Plaintiffs' Summons:
MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al.,	
DEFENDANTS-APPELLEES.	

TO: Matanuska-Susitna Borough, and Mr. Patrick E. Lancaster, Esq.

TO: Mr. Jim Psenak and Psenak's Construction Company, et. al:

Address of Mat-Su and Psenak:
268 E. Fireweed St; Palmer, Alaska 99645; Ph. # ?

Address of the Psenaks;
221 E. Auklet St; Palmer, Alaska 99645

YOU ARE HEREBY SUMMONED and required to

file with the court an answer to the complaint which accompanies this summons. Your answer must be filed with the court at Box 860 and or 268 East Fireweed Street Palmer, Alaska 99645; within 20 days after the day you receive this summons. In addition, a copy of your answer must be sent to plaintiffs' Pro se: Mr. Freddie Bibbs, and Mr. Lockhart, whose address is: Box 2893; Palmer, Alaska 99645 and 3727 Randolph Street, Anchorage, Alaska 99508.

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

☐ This case has been assigned to Superior Court Judge Beverly Cutler.

☐ This is a District Court case and will be assigned to an available judge.

CLERK OF THE TRIAL COURTS

B-4.2

AUGUST 21, 1985 BY: L. SHAW
DATE Deputy Clerk

*The State or a state officer or agency named as defendant has 40 days to file its answer.

Darrow Security

CIV-100 (ANCH)(7/82)(st. 3) CR 4, 5, 12, 55
SUMMONS Rec 8/29/1985
By Bibbs

* Attention: It should be kept in mind that there should be four [4] copies altogether.

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER, ALASKA

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES.,	Filed 8/12/1985
PLAINTIFFS., APPELLANTS.,	3PA 85-1405 Civil:
VS.	Co-Plaintiff Bibbs' Affidavit
MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al.,	
DEFENDANTS-APPELLEES.	

I, Mr. Freddie Bibbs, say that I am party plaintiff along with Mr. Jimmie Drew Lockhart, Sr., pro se whom are here with me to protect his interest.

I, Mr. Freddie Bibbs, say that I am party plaintiff to this legal action, who aver and swear(s) to the following;

That I am the blood born son of Mrs.

Martha N. Stores, and that she is the legal owner of said property in question and that I have general power of attorney to said property.

2. That I reside at/on said legal property, which is my legal domain at all times.

3. That I've resided on said property at all times since approximately 1979.

4. That said property was purchased approximatley 1976, on a monthly basis payoff.

A. That said property was paid off in full approximately 1981.

B. That said property, which my mother claims clear title there.

C. That I/we have been paying said property taxes on said entire ten (10) acres since our purchase date.

D. That the Matanuska-Susitna Borough

to the best of knowledge has never prorated said property taxes for the approximately 1-1/2 acres it allegedly claims as legal unquestionable right-of-way property.

E. That said Borough's 1985 property taxes in the amount of $369.92 represents one half (1/2) of the yearly taxes which has already been paid by Bibbs. At no time the Borough has prorated said property taxes pursuant to their claiming rights to approximately one an done half (1-1/2) acres easement rights for a public road right-of-way, which taxes have been collected on for over some thirty (30) odd years.

5. That Mr. Jimmie Drew Lockhart, Sr., did advance cash money to me assisting me getting settled thereof on said property, I did by verbal basis give my word of honor to Mr. Lockhart, Sr., lien pending payoff.

6. That on approximately July 29, 1985, I and my mother visited Borough Official Mr. Lancaster's office.

A. I informed Mr. Lancaster, that someone from his office had called me by phone on or about July 15, 1985, informed me that the surveyors were already there surveying section line road right-of-way.

B. That when I requested the party's name who called me on July 15, 1985, Mr. Lancaster refused to give me the name of the caller.

C. That on or about July 31, 1985, (two days later) Mr. Lancaster came to my residence and hand delivered to me personally exhibits "A & B", and offered his apology to me for his July 29, 1985 misconduct toward my mother and myself.

D. Our review of the Borough's taxing record of the entire ten (10) acres does

reflect to have been in effect for some thirty (30) odd years. Accordingly, that caused a clout on the title when in-question of the Borough having an absolute right-of-way right around an eminent domain doctrine.

7. The Borough fails timely informing either of us of their contemplating said public right-of-way road constructing on to our personal real property.

8. After Mr. Lancaster learning my resentment of the surveyors trespassing onto our property. He threatened me with a court order restraining me if I offered any interference with the surveyors or any one else having to do with the road construction.

9. Said correct real property legal description thereof is believed to be: Southeast one quarter (1/4), of Southeast

one quarter (1/4), southeast one quarter (1/4) of § twenty-five (25), township seventeen (17), North Range two (2) East, Seward Meridian Palmer Recording District, Third Judicial District State of Alaska.

10. That this sworn(ed) affidavit is meant to be a part of our attached complaint, and motion support hereof.

11. That all asserted statutes, rules and stated decisions cited within our attached complaint, is believed to be true and correct to the best of my belief, ability, and knowledge.

Further your affiant sayeth naught.

Dated at Palmer, Alaska on this _____ day of August 1985.

_____

Mr. Freddie Bibbs:

Subscribed and sworn(ed) to before me this ____ day of August 1985.

Notary Public in and for the State of Alaska

_____

My Commission Expires: _____

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER, ALASKA

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES.,	Filed 9/9/1985
PLAINTIFFS., APPELLANTS.,	Document Dated 8/27/1985
VS.	3PA 85-1405 Civil
MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al.,	Informal Request For Original Pro-Documents
DEFENDANTS-APPELLEES.	

Now come plaintiffs, by and through themselves, pro ses, and request Mat-Su Borough furnish and served upon plaintiffs, certain documental material pursuant inter alia to Civil Rule 34 (a)(b), within (30) days after your receipt hereof, unless a different time is set by the court, which we are requesting the court for shortening

time not to exceed fifteen days (15) in lieu of the required thirty (30) days, in view of facts being that said documents should be within the Borough's custody, having full immediately access thereof. Accordingly, we request the following items:

1. Any and all in-house Borough's highway traffic (and/or other drafting or design certified copy or copies that have been on the program or scheduling for studies for public roadway construction for the past five (5) years, including crossing Bibbs, Stores' real property.

2. Any if any documents reflecting the owner or owners of adjoining read, side, and front properties.

3. The original United States government owner property land patent.

4. THe original United States

government established sales of the in-questioned real property, and not limited to the surrounding properties including any record asserting the Borough's absolute right as of July 1985, having easement rights onto Bibbs, Stores' properties without having to invoke eminent domain doctrine.

5. Copy or copies of any maps stating in any type of English giving the borough authority to encroach upon said real property to perform eminent domain possession over one's real property without first legal proceedings, article one (1) §[7] of the constitution of the State of Alaska, the fifth amendment to the United states constitution. Also see: Housing Authority of Cherokee National of Oklahoma vs. Lamgloy, Okl., 555 P.2d 1025, 1028., Town of Winchester vs. Cox, 129 Conn, 106.,

26 A.2d 592, 597.

6. Copy or copies of Mat-Su Borough's assemblyman and or assemblies in general, letter or other copy or copies authorizing any of its employees, servants to perform eminent domain action upon Bibbs, Stores' real property constructing a public right-of-way.

7. Copy or copies of any alleged Borough official meeting discussing the in-question action on preplanned right-of-way across property owners property.

8. Copy or copies of any meeting between Ms. Stores or Mr. Bibbs prior the Borough commencing its operation for said public roadway construction.

9. Copy of the Borough's documents authorizing the surveyors to commence surveying.

10. Copy of the date the Borough's

notice to the construction contractor to commence starting date.

11. Copy of the contractor's notice t the borough that construction had commenced.

12. Copy of the borough officer(s) authorized the contractor construction on the in-question roadway.

13. Copy of the Borough office authorization to the person in charge of the highway supervisor (inspector) thereof.

Plaintiffs, thanking you in advance for your cooperation.

Dated at Anchorage, Alaska on this 27th day of August, 1985.

Mr. Freddie D. Bibbs,
and

Mr. Jimmie Drew Lockhart, Sr., Pro Ses:

I/we certify on this 27th day of August (1985) that we caused a true and correct copy of the foregoing to be served upon defendants' legal counsels' address of records at Palmer, Alaska.

_____

Mr. Freddie D. Bibbs, Sr.
and

_____

Mr. Jimmie Drew Lockhart, Sr., Pro Ses:

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER, ALASKA

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES.,	Filed 8/27/1985
PLAINTIFFS., APPELLANTS.,	3PA 85-1405 Civil:
VS.	Plaintiffs' Ex Parte Express Motion to Compel Immediate Service:
MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al.,	
DEFENDANTS-APPELLEES.	

Come now plaintiffs' Mr. Bibbs and Mr. Jimmie Drew Lockhart, Sr., pro ses and move this Honorable Court, through Ms. Judge Cutler, for an ex parte express order, ordering Darrows' Security Agency, Inc., and Mr. David J. Darrow of P.O. Box 2452, phone # (907) 745-5394, at Palmer, AK, to come to this court clerks' office and pick-

up this court order immediately to day August 28, 1985, and show to this court proof of service upon the above named defendants, of the plaintiffs' August 12, 1985 complaint no later than 10:00 a.m. August 28, 1985.

Plaintiffs, base this motion on the following grounds, see: The attached combination memorandum, affidavit.

Respectfully presented in respect of this court's rules and the licensed process server's sworn(ed) code of ethics.

Dated at Palmer, and Anchorage, Alaska on this 27th day of August 1985.

_____

Mr. Freddie Bibbs, Pro Se:
and

_____

Mr. Jimmie Drew Lockhart, Sr., Pro Se:

I, we certify on this 27th day of August 1985, that I mailed a true and correct copy of the foregoing to each of the above named defendants' address of record.

Mr. Freddie Bibbs, Pro Se
and

Mr. Jimmie Drew Lockhart, Sr. Pro Se:

O R D E R

Upon this court perusal of plaintiffs' motion and supported by Mr Bibbs' sworn(ed) affidavit, and plus facts of this court clerk's office records lack showing that plaintiffs' August 12, 1985 summons and complaint shows of ever being served as required pursuant to Civil Rule four (4). This court is anxious to know as well as the plaintiffs what caused such great delays. This court finds such delay could be construed as being willful negative on the part of the plaintiffs' hired legal Process Server's part.

That because of the above cited reasons the court order the clerk to inform by

phone, Darrow's Security Process Server's office to come to this court clerk's office today, August 27, 1985, order, Ordering Darrow's Process Server to file proof of service in each above-named defendants, with this court clerk no later than 10:00 a.m. August 28, 1985.

Darrow's Process Servers are to file with court a show cause of why the plaintiffs summons and complaint has not been served sooner, and

Darrow's Security Process Servers, Co. is to forward to Plaintiff Mr. Bibbs by special service no later than August 28, 1985 a true and correct copy thereof.

I T I S S O O R D E R E D

Dated at Anchorage, Palmer, Alaska this ____ day of _____ 1985.

_____

Beverly W. Cutler
Superior Court Judge

I/we certify on this 27th day of August 1985, that I mailed a true and correct copy of the foregoing to each of the defendants at their present addresses.

_____

Mr. Freddie Bibbs
and

_____

Mr. Jimmie Drew Lockhart Sr.,
Pro Ses:

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER, ALASKA

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES.,	) Filed) 8/27/1985) 3PA 85-1405 Civil:
PLAINTIFFS., APPELLANTS.,	) Plaintiff Bibbs' Affidavit in Support of Our 8/27/85 Motion To Compel Process Server to Serve Summons.
VS.	
MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al.,	
DEFENDANTS-APPELLEES.	

Mr. Freddie Bibbs, say that I am party plaintiff to the above complainant, aver and swear(s) to the following:

That on August 12, 1985, Mr. Lockhart, Sr., and myself filed into the Palmer branch of the Superior Court case No. 3-PA 85-1405 civil.

That upon our completed filing our

complaint, we looked up several process servers phone numbers that did not answer, after several calls we were able to reach and make contact with Darrow Security Agency, Inc. Process Servers, who informed us over the phone that they would serve our summons and complaints along with other legal documents contained therewithin.

On the same a.m., we proceeded to the processor's office, and contracted (see: exhibit "A" attached) with Darrows to serve the above named defendants.

We were informed by one of the employees who wore Major Bars on his uniform, that he would serve said documents "tomorrow" (8/13/1985). We paid their required fees cash of (see: attached exhibits)($104.00) one hundred four dollars and no/100. During the business transaction Darrow, or one of the employees informed us that he

resided on the same street as Mr. Psenak. And that he foresaw no problems serving the named defendants, because it meant only making two stops. And upon making service upon the parties, he would serve upon Mr Bibbs original certified copies of the proof of service. After two weeks passed (8/26/1985) and we had not been served notice of service from Darrows' process Server, I called Mr. Lockhart, Sr., at Anchorage on that matter. HE advised me to (a) Check the court file at Palmer, to see whether the Process Server had maybe returned their proof of service directly to the clerk's office. After checking the court file finding that there being no return made there. (b) I went to (8/26/1985) Darrows' office in search of their reasons why the summons had not so been served on the defendants. i as so

informed by the same party whom transacted the original business, that he had to process said documents first before making service upon the parties. And plus the facts one of the named parties was a personal friend of his, and that he would serve said documents the very next day (8/27/1985) for sure. After his last promise to Mr. Lockhart, Sr., and myself, I lost confidence that he would keep his word because of sentimental reasons on their part.

That because of the asserted facts plaintiff Mr. Bibbs pray that this court grant our motion freely inasmuch as the facts do show, that after approximately two (2) weeks had passed with their effectuating service of summons and complaint upon the defendants, should be grounds along to grant our motion in the

interest of justice.

Further your affiant sayeth naught.

Dated at Palmer, Alaska this 27th day of August, 1985.

_____

Mr. Freddie Bibbs, pro se:

Subscribed and sworn(ed) heretobefore me on this _____ day of August 1985.

Notary Public in and for the State of Alaska:

_____

My Commission Expires:_____

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER, ALASKA

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES.,	Filed 9/9/1985
PLAINTIFFS., APPELLANTS.,	Pleading Dated 9/26/1985
VS.	3PA 85-1405 Civil:
MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al.,	Plaintiffs' Notice and Request For Production of Original Documents.
DEFENDANTS-APPELLEES.	

Now come plaintiffs, by and through themselves propria persona (Pro Se) and request of you only Jim Construction Co. to furnish and serve upon Plaintiffs, within thirty (30) days after your receipt of this request, unless the court grants a different time in which (Civil Rule 34) plaintiffs are requesting a shortening of

time to fifteen days since the requested documents hereafter, are believed to be in the construction company's possession and should be otherwise readily accessible to, especially the owner or owners or administrators, etc.

Plaintiffs' request is pursuant to Civil Rule thirty-four (34) and twenty-six (26) inter alia.

Plaintiffs are requesting the following documents:

(1) A copy of the Company's Alaska construction Business License.

(2) A copy or copies of the name or names of the registered agent or agents showing names and addresses of each.

(3) Copy of incorporation's Alaska license, certification and Alaska Business License.

(4) Copy of Insurance Company carrier

or carriers.

(5) Copy of original Company Incorporation's application presented to the State for approval.

(6) A copy of Matanuska-Susitna Borough's contract to the contractor to perform construction on said in-question road across Ms. Stores' property.

(7) A true and certified copy or copies of drawings and map of the routed public road-way that may have been submitted with your contracting company's contract.

(8) Copy of the Mat-Su's map and drawings that exhibit the present planned public in question road.

(9) Copy or copies of any monthly payments or payment toward construction material and equipment.

(10) Copy of Mat-Su's order for the contractor to start work.

(11) A copy of the contractor's record of the date started constructing said in-question public road-way.

(12) Copy or copies of any prior notice or notices to said property owner or owners notifying them of said encroachment on to their property to construct said pre-planned public road-way.

(13) Copy or copies of company's employees certified payroll to said in-questioned public road-way contract.

(14) Copy of Insurance workman's compensation Insurance coverage policy or policies.

(15) Copy or copies of contracts with the Mat-Su Borough during the last past five (5) years.

(16) Copy of Mat-Su's official whom signed said road-way contract.

(17) Copy of all other bidders whom bid

on said in-questioned bid opening to the Mat-Su's bid date.

(18) Copy of the contractor's officials whom signed a or the documents of the Mat-Su Borough's minorities participation legal agreement certifications.

It's the plaintiffs' position, that an official of the contractor's should certify under oath that all requested and served documents are believed to be true and correct to the best of his or her belief and knowledge. And signed before a certified licensed Alaska Notary Public.

Plaintiffs thank you in advance for your cooperation.

Dated at Anchorage, Alaska this 26th of August, 1985.

_____

Mr. Freddie Bibbs, Pro Se., and

_____

Mr. Jimmie Drew Lockhart, Sr.,
Pro Ses:

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	Filed 11/2/1987 Along with
PLAINTIFFS,	Defendants' Motion For
VS.	Summary Judgment.
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	Affidavit:
DEFENDANTS.	

AFFIDAVIT OF TERRY MAW

STATE OF ALASKA)
)ss:
THIRD JUDICIAL DISTRICT)

I, Terry Maw, being duly sworn, do attest to the following:

1. I am a land surveyor, duly licensed and certified in the State of Alaska and was so in July and August, 1985.

2. In July and August, 1985, I was employed by M & R Surveying. I performed the surveys for the Matanuska-Susitna

Borough Claudill Road extension which is the subject of this lawsuit.

3. On July 25, 1985, I sent notices to Martha Stores and Freddie Bibbs, by return receipt letter, that I was going to perform the necessary surveys for the project. Such notices were pursuant to AS 34.65.010.100.

4. On August 5, 1985, I surveyed and flagged the proposed road alignment. My flagging was at 33 feet from the common § line between §§ 25 and 36, on the south side of the § line only. I also flagged the east side of the § line right-of-way between §§ 25 and 30 going north to Pine Tree Way. Any flagging which was done on the Bibbs property was within the § line easement and extended no more than 33 feet into the property from the § lines.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 10th day of July, 1987.

Terry Maw: _____

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	Filed 11/2/9187 Along with Defendants' Motion For Summary Judgment Motion:
PLAINTIFFS,	
VS.	
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	
DEFENDANTS.	

AFFIDAVIT OF GEORGE PAULSBERG

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

I, George Paulsberg, being duly sworn, do attest to the following:

1. At all relevant times described in the complaint, I was Chief of Construction Design, Public Works Department of the Mat-Su Borough. I have been employed in the Public Works Department of the borough for the past 9-1/2 years. All facts attested

to in this affidavit are based upon my personal knowledge.

2. The road in question was constructed to provide emergency access to the Butte Airstrip, which lies to the south of the butte Elementary School site. Prior to construction of the road in question, the airstrip could be reached only by the Jim Creek Trails coming through the Butte Elementary School site. In the spring, such roads were inaccessible even by 4-wheel drive. The Borough determined that there was a need for emergency access to the airstrip. The Borough Assembly, in Resolution 83-75 (7/5/83) resolved to keep the Jim Creek Trail through the Butte Elementary School site open until other access to the airstrip was available. The reason for constructing the road was to provide emergency service access to the

airstrip and to comply with Assembly Resolution 83-75. It was desirable that emergency access to the airstrip not pass through the Elementary School site for safety reasons.

3. I was responsible for evaluating various alternative locations for providing emergency access to the airstrip from the Old Glenn Highway and the Bodenberg Butte area. There were three primary criteria for the route selective:

a. The route must comport with the public good/least private harm and should avoid crossing private property not encumbered with dedicated easements as such as possible.

b. Bodenberg Creek, an anadronomus Salmon Stream, would have to be crossed. The State

Department of Fish and Games would not allow the borough to use a culvert across Bodenberg Creek. A bridge should be part of a public, not private, road system.

c. The Borough lacked sufficient funds to build both the road and a new bridge. use of a previously constructed, public, bridge was indicted.

4. fire alternative routes were considered:

a. A northern approach was considered which would involve a stub road off of Lasenby Road. This was ruled out because of the necessity of crossing extensive amounts of private property which were not already encumbered with a dedicated right-of-way.

b. An extension of McKechnie Loop Road was considered. private Bridges already crossing Bodenberg Creek in the McKechnie Loop area. However, these abridges were private, not public. In addition, and extension of McKechnie Loop Road to Jim Creek Trail - Butte Airstrip area would involve extensive crossing of private property not already encumbered by dedicated right-of-way easements.

c. Extension of Fairweather Lane was considered. This was ruled out because of the necessity for crossing large amounts of private property not already encumbered by dedicated right-of-way easement.

d. Access to the Jim Creek Trail by various routes south of the

section line separating Sections 25 and 36 were considered. They were also ruled out because of the necessity of the crossing large amounts of private property not previously encumbered by dedicated right-of-way.

e. The present location was chosen because of prior existing public roads; an existing pubic bridge across Bodenberg Creek; and because it required no use of private property other than that which was already encumbered by existing dedicated section line rights-of-way. The routes involved use of Plumbley Road, a state maintained road, going east from the Old Glenn Highway to Claudill Road. A public bridge on Plumbley

road crossing Bodenberg Road. Claudill Road exited south from Plumbley to Pine Needle Way. In addition, Plumbley Road, Claudill Road, and the § line right-of-way on the south side of § 25 and north side of § 36 were already designated roads on the Matanuska-Susitna Borough Official Streets and Highway Plan Map, Page 1 of 2, which existed on May 30, 1985. Claudill Road was extended south within existing § line rights of way from Pine Needle way to the common § corner between § 25, 36, 30 and 31. it was then extended west within existing § line right-of-way between §§ 25 and 36 and, further west, between §§ 26 and 35. The road terminated at Bodenberg

Creek. This provided access to the Butte Airstrip without crossing private property which was not otherwise encumbered by a previously existing, dedicated, § line right-of-way. Another consideration for selection of this route was the Borough's desire to limit recreational use of a new road which would go through heavily developed subdivisions. of all routes considered, that chosen had the least impact upon private property, regardless of the race, religion, or color of the property owners. Located of the road's center line is shown on exhibit 1.

5. My route selection was approved by Rodger Lewerens, the Director of Public Works and by Gary Thurlow, Manager of the

Matanuska-Susitna Borough (Exhibit 2).

6. No portion of the road, nor the surveying or clearing which preceded construction of the road, was on any portion of the Stores/Bibbs property outside of the § line right-of-way which exits for 33 feet on each side of the common § line between §§ 25 and 30.

7. The project was put out to public bid. Psenak Construction Company was the low bidder and, hence, was awarded the contract.

8. Patrick Lancaster, a right-of-way agent for the Matanuska-Susitna Borough, had no involvement in the project except certifying the right-of-way determining the location of the § line easements on each property and determination of any other easements which may have existed on particular properties in each proposed

alignment); notifying each property owner of the proposed project; and giving a letter f authorization to proceed to the contractor, Psenak, and to M & R Surveying, the surveyor on August 5, 1985. Mr. Lancaster did not select the route which was chosen or the properties which the road would cross.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 10th day of June, 1987.

George O. Paulsberg:

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	Filed 11/2/1987 Along with Defendants' Motion For Summary Judgment.
PLAINTIFFS,	
VS.	
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	Affidavit:
DEFENDANTS.	

AFFIDAVIT OF FRED SCHWARDER, ESQ.

STATE OF ALASKA)
)ss:
THIRD JUDICIAL DISTRICT)

I, Fred Schwarder, being duly sown, do attest to the following:

1. In July and August, 1985, I was employed by George Schwarder & Associates. My function on the Claudill Road extension was to act as a Borough's inspector for the roadwork being done.

2. At no time was work done in the

vicinity of the Stores/Bibbs property which was not entirely contained within the § line right-of-way, extending 33 feet on each side of the common § lines.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 9th day of July 1987.

Fred Schwarder:

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER, ALASKA

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES.,	Filed 4/12/1988
PLAINTIFFS., APPELLANTS.,	Plaintiffs' Motion to Accept Affidavits
VS.	
MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al.,	3PA 85-1405 Civil:
DEFENDANTS-APPELLEES.	

M O T I O N

Come plaintiffs Bibbs and Lockhart, Sr., Pro Ses., and move upon this Court to accept each plaintiff's sworn(ed) affidavit as supplemental to (our) their 12th day of November and 2nd day of December, 1987 opposition thereto defendants' 2nd day of November, 1987 motion, memorandum and con-

concomitant exhibits., and in complying with this court's 1st day of April, 1988 notice to the Plaintiffs.

Respectfully submitted at Anchorage, Alaska this 12th day of April 1988.

_____

Mr. Freddie Bibbs, Pro Se, and

_____

Mr. Jimmie D. Lockhart, Sr., Pro Ses:

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER, ALASKA

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES.,	Filed 4/12/1988
PLAINTIFFS., APPELLANTS.,	Plaintiffs' Response to the Court's 1st day of April, 1988 Notice to Plaintiffs:
VS.	
MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al.,	3PA 85-1405 Civil: Production of Original Documents.
DEFENDANTS-APPELLEES.	

PLAINTIFFS' RESPONSE TO THE COURT'S 1st DAY OF APRIL, 1988 NOTICE TO THE PLAINTIFFS:

Please take notice that the concomitant affidavits herewith are as per this court's 1st day of April, 1988 notice to the plaintiffs, as noted to Breck vs. Ulmer, et. al., as the Supreme Court Opinion No. 3241, November 6th 1987, it's well taken by

both plaintiffs.

Furthermore, plaintiffs' concomitant affidavits are meant for the plaintiffs' 12th day of November, 1988 opposition to the defendants' 2nd day of November 1988 motion for Summary Judgment, Supporting Memorandum and supporting exhibits.

Wherefore, plaintiffs, so move the court to accept their concomitant affidavits as part thereof to said 12th day of November, 1987 opposition.

Respectfully submitted at Anchorage, Alaska this 12th day of April 1988.

_____

Mr. Freddie Bibbs, Pro Se, and

_____

Mr. Jimmie D. Lockhart, Sr., Pro Se:

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER, ALASKA

MS. MARTHA N. STORES c/o MR. FREDDIE BIBBS, and MR. JIMMIE DREW LOCKHART, SR., PRO SES.,	Filed 4/12/1988
PLAINTIFFS., APPELLANTS.,	Co-Plaintiff Lockhart, Sr.'s Affidavit:
VS.	
MATANUSKA-SUSITNA BOROUGH and MR. PATRICK E. LANCASTER., and MR. JIM PSENAK and PSENAK'S CONSTRUCTION COMPANY, et. al.,	3PA 85-1405 Civil:
DEFENDANTS-APPELLEES.	

AFFIDAVIT OF CO-PLAINTIFF LOCKHART, SR.'S

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

I, Mr. Jimmie Drew Lockhart, Sr., pro se being duly sworn(ed) upon oath, depose and states that I am party co-plaintiff to the above Captioned case, that the plaintiffs' 12th day of November, 1987 and amended 2nd

day of December, 1987 opposition to the defendants' 2nd and 24th days of November, 1987 multi pleadings, which consisted of motion for summary judgment, and opposition to the appellants' 12th day of November, 1987 opposition to summary judgment.

The record reflects, that the defendants 2nd day of November, 1987 motion, memorandum and exhibits thereof were premature, and their preponderance of evidence does not support the court grating relief sought (Alaska Civil Rule Procedure 60 (b)(1) and Porter vs American Tobacco Co., D. C. N. Y (1946) 7 F.R.D. 106).

The record does reflect, that the plaintiffs' pleading, cited proper authorities to substantiate a denial of defendants' summary judgment motion., Gillespie v. Civolletti, 629 F.2d 637 (9th Cir. 1980.) and 42 U.S.A.C. §[1986]. The

facts do reflect, that the plaintiffs' can prove no set of facts which would entitle them to relief.

It is further noted, that defendants' legal counsel(s) depended upon unknown none parties affidavits as evidence to this action to support their motion for summary judgment. The records reflect, that the plaintiffs' were not made aware aforehand of said uninvolved inter alia, of Mr. George Paulsberg., (exhibit "32" thru "32:E", Mr. Terry Maw, exhibit "35 and 35:A"), Mr. Fred Schwarder, (exhibits "36 and 36:A")., Belenger vs. Hopeman, Inc., D. C. M. E. (1947) 6 F.R.D. 459, 461 (per Justice Peters) and Peter vs. American Tobacco Co., D.C.N.Y. (1946) 7 F.R.D. 106., Hickman vs. Taylor, (1947) 67 SCt. 385, 389, U.S. 495, 500 91 LEd, 451., Alaska Civil Rule 06 (b)(1)., inter alia Gillespie

vs Civiletti.

Furthermore, I caused true and correct copies of the following to be served upon defendants' legal counsel, (1) Motion to accept each plaintiff's affidavit as supplemental to (our) their 12, day of November, and 2nd day of December, 1987 opposition to the defendants' 2nd day of November 1987 motion, memorandum and supporting exhibits. (2) Plaintiffs response to this court's 1st day of April, 1988 notice to plaintiffs. (3) Plaintiff Lockhart, Sr.'s affidavit in support of aforementioned November and December, 1987 opposition. (4) Plaintiff MR. bibbs' affidavit in support with Lockhart, Sr.,'s affidavit.

Said service is served upon defendants' legal counsel's address of record at Attorney Pletcher & Slaybaugh, 480 W. Tudor

Rd., Suite 101, Anchorage, Alaska 99503.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Respectfully submitted at Anchorage, Alaska this 12th day of April, 1988.

Mr. Jimmie D. Lockhart, Sr., Pro Se:

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	)	Filed 4/12/1988
PLAINTIFFS,	)	Affidavit Of Plaintiff Bibbs
VS.	)	
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	)	
DEFENDANTS.	)	

AFFIDAVIT OF CO-PLAINTIFF MR. BIBBS

STATE OF ALASKA)
)ss:
THIRD JUDICIAL DISTRICT)

I, Freddie Bibbs, pro se after being duly sworn(ed) upon oath, depose and state, that I am party co-plaintiff to the above-captioned case. That, after my reviewing co-plaintiff Lockhart's concomitant affidavit, I concur therewith, and furthermore, I cannot add further thereto, on grounds that to the best of my

knowledge, the authorities cited therewithin is proper facts of the preponderance of evidence to out weigh defendants' premature motion for summary judgement. Furthermore, I personally feel, that defendants should be sanction for posting such moot pleadings.

Respectfully submitted,

FURTHER AFFIANT SAYS NAUGHT.

DATED at Anchorage, Alaska this 12th day of April, 1988.

Mr. Freddie Bibbs, Pro Se:

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	Filed 4/21/1988
PLAINTIFFS,	3PA 85-1405 Civil
VS.	Plaintiff's Notice:
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	
DEFENDANTS.	

PLAINTIFFS' NOTICE TO THE COURT

If is pleases the court, attached hereto are copies of Plaintiffs' 20th day of April 1988, request for interrogatories directed to co-defendant Mat-Su Borough only., (see co-defendant Mat-Su Borough only., (see co-defendant's legal counsel's date stamp of receipt.)

Plaintiffs' reasons for alarming this court, is because of defendants' pass motion to dismiss for want of prosecution,

etc. and followed (and still pending before the court for a ruling) by Summary Judgment, attached thereto was their unclassified discovery material all of which plaintiffs had previously requested from defendants, without success, despite pursuant inter alia, discovery Rules 26 and 34, respectively.

Dated at Anchorage, Alaska this 21st day of April 1988.

Mr. Jimmie Drew Lockhart, Sr., Pro Se:

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	Filed 6/15/1988
PLAINTIFFS,	Combination Motion and
VS.	Court Order; 3PA 85-1405
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	Civil:
DEFENDANTS.	Served on Plaintiffs 6/12/1988.

M O T I O N

With this court having full knowledge of the above-captioned case at Bar. And upon review of Plaintiffs' motion for leave to this court to file supplemental pleading to their 12th day of November 1987, opposition with combination motion.

Plaintiffs' supplemental does not appear to show any prejudice or harm toward defendants' defenses. On this court assumptions, that being the situation, this

court herebefore, grant plaintiffs' motion for leave to supplement.

WHEREFORE, IT IS SO ORDERED:

DATED this 17th day of June, 1988.

Beverly W. Cutler
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MR. FREDDIE BIBBS., PRO. SE., et. al.,	Filed 7/14/1987
PLAINTIFFS,	No. 3PA 85-1405 Civil
VS.	Reply
MATANUSKA-SUSITNA BOROUGH, INC., et. al.,	
DEFENDANTS.	

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS

Plaintiffs last six times which, they claim, should constitute a "proceeding" in the past year which would preclude dismissal of this case for want of prosecution. None is a "proceeding" within the meaning of Civil Rule 41 (e) or Shiffman vs. K., Inc., 657 P.2d 401, 403 (Alaska, 1983). These are:

1. The February 20, 1987 denial, by the Ninth Circuit Court of Appeals, of

Plaintiffs' Motion for reconsideration that plaintiffs' could not remove their own case from State to Federal Court. The removal, and appeal from its denial, are so frivolous that even layman plaintiffs should not be allowed to claim this as a "proceeding." That is particularly true because of this court's repeated admonitions to plaintiffs that they should seek legal counsel for their guidance.

2. Plaintiffs' claim that defendants have not responded to their August 27, 1985 request for production. The request for production came one day after the Matanuska-Susitna Borough had been served with a Summons and Complaint. No Motion to compel was filed until after the motion to dismiss of June 17, 1987. Filing of a motion to compel, after the motion to dismiss was filed, does not constitute a

"proceeding."

2. Plaintiffs' claim that defendants did not respond to their June 22, 1986 or May 29, 1986 "formal reply through request for production of documents." This is frivolous. Neither a request for production nor any response thereto is entitled to be filed in court. A response to the "informal reply" is improper. None of this is a "proceeding."

4. Plaintiffs allege that defendants, in their June 17, 1987 motion for dismissal, failed to attach to that motion copies of all documents which have been filed in this court to date, which would substantiate said motion. This is also frivolous. The court's records speak for itself. Well over a year has passed without filing of any documents by plaintiffs which would constitute a

"proceeding" calculated by any part to move this case toward trial.

5. "Plaintiffs allege that "taxation of the property in question by the Matanuska-Susitna Borough in 1986/1987 has occurred. The taxation may or may not have been appropriate. That is not at issue in this case. Taxation of property is not a "proceeding" within the meaning of Civil Rule 41 (e). This is a normal governmental activity which has no relevance whatsoever in consideration of Civil Rule 41 (e).

6. Plaintiffs allege that defendants' counsel changed address in July, 1986 without informing plaintiffs of defense counsel's whereabouts. This is also frivolous. Plaintiffs do not allege that at any prior to the motion to dismiss of June 17, 1987, that they attempted to communicate with defendants' counsel or in

any way were thwarted in attempting to file a "proceeding" in this court which would toll the one year period specified in Civil Rule 41 (e).

Plaintiffs have done nothing to bring this case toward trial for well over a year prior to June 17, 1987 motion to dismiss. No "proceeding" was filed. Nothing was done except a frivolous appeal to the Ninth Circuit court of appeal concerning removal of plaintiffs; own case, which any layman would deem to be frivolous. Layman, repeatedly advised by this court., . . ."

Dated at Anchorage, Alaska this 14th day of July 1987.

Attorney: Richard Weinig: